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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-164

PASADENA CITY BOARD OF EDUCATION, ET AL.,
Petitioners,

vs.

NANCY ANNE SPANGLER, ET AL.,
Respondents,

and

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

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UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Petitioners pray that a writ of certiorari issue to review the judgment of the Court of Appeals for the Ninth Circuit, entered on 5 May 1975, in the above-entitled action.

OPINIONS BELOW.

The opinions of the Court of Appeals for the Ninth Circuit are unreported. They are reproduced as Appendix A to this petition. The opinion of the United States District Court for the Central District of California is reported at 375 F. Supp. 1304.

An earlier decision of the District Court in this litigation is reported at 311 F. Supp. 501.

JURISDICTION.

The opinions and judgment of the Court of Appeals were entered on 5 May 1975. The jurisdiction of this Court is invoked pursuant to 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED.

1. Is a judicial decree valid which requires a fixed racial balance for all schools within a school system?

2. Is a school system required to amend its judicially validated desegregation plan to accommodate for annual demographic changes for which the school system is in no way responsible?

4. Must a unitary school system which has been in compliance with a school desegregation decree for four years remain subject indefinitely to the control of the trial court which entered the decree?

4. Does a decree imposing racial balance preclude a school board from acting to prevent the school system from becoming an all-minority school system?

5. Does the inclusion of a "freedom of choice" element in a proposed desegregation plan make it invalid *per se?*

CONSTITUTIONAL PROVISION INVOLVED.

"No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." United States Constitution, Amendment XIV, § 1.

STATEMENT.

I. The Original Decree.

In January, 1970, the District Court for the Central District of California, entered a decree enjoining the Pasadena City Board of Education (Petitioners) "from discriminating on the basis of race in the operation of the Pasadena Unified School District." *Spangler* v. *Pasadena City Board of Education,* 311 F. Supp. 501, 505 (C. D. Calif. 1970). Essentially the findings of violations were based not so much on affirmative acts of segregation by Petitioners, as on their failure to act to prevent "racial imbalance." For the District Court of the Central District of California: "Racial segregation and racial imbalance are two names for the same phenomenon, racial separation. The terms are used interchangeably throughout these findings and conclusions." *Id.* at 506, n. 4. This confusion of racial imbalance and racial segregation is, in large measure, responsible for the basic errors committed by the courts below. The district court decision was rendered before the judgment of this Court, in *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U. S. 1 (1971), where it was made abundantly clear that "racial imbalance" and "desegregation" are not alternative descriptions of "the same phenomenon."

The trial court's 1970 judgment required the Board "to prepare and adopt a plan to correct racial imbalance at all levels." *Id.* at 505. And further: "The plan shall provide for student assignments in such a manner that, by or before the beginning of the school year that commences in September, 1970 there shall be no school in the District, elementary or junior high or senior high school, with a majority of any minority students." *Ibid.* There is nothing in the language of this judgment to suggest that the racial balance required by the order was to be effective in perpetuity.

There is no question that the plan effectuated in the Pasadena Unified School District, which is made up of the city of Pasadena, the city of Sierra Madre, the town of Altadena, and portions of Los Angeles county, complied with the requirements of the order. The 1970 plan divided the school district into four ethnically balanced areas. Within each of these divisions, students were assigned to schools in a fashion assuring that no racial or ethnic minority made up a majority of any school in the system. This was accomplished in large measure by the utilization of extensive crosstown busing.

II. Post-Decree Events.

The plan that was instituted in 1970 has been adhered to by the Board since that time. In the interim, however, there have been demographic changes within the school district. The school population at the time of the framing of the plan was 17,859 whites, 9,173 blacks, and 3,590 other minorities. By the time of the trial from which review of the judgment is sought here, the school population was 11,188 whites, a decrease of 37.4%; 10,155 blacks, an increase of 10.7%; and 4,711 other minorities, an increase of 31.4%.

Petitioners contended that the cause of the decline in the white school population was "white flight." Respondents and the courts below asserted that the diminution of the white student population was simply a reflection of a statewide—if not national—movement away from cities to the suburbs. (This despite the fact that the school system in question here is a suburban school system.)

Whatever the cause of this demographic change, however, there has been and can be no attribution that it has been caused by actions of the Petitioners. And, on either hypothesis, it is agreed that the trend is expected to continue.

By reason of the changing school population and residential movements within the school district, over the four-year period in which the plan was in effect, a few of the thirty-five schools

in the system failed to maintain the standard of "no majority of any minority" rule. As Judge Wallace said below (App. A26):

> The injunction took effect in the fall of 1970. In October, 1970, no school had a majority Black enrollment. In October, 1971, one out of the 35 regular schools in the district had a majority Black enrollment (51.9%). In October, 1972, four schools were in violation with Black enrollments of 53.9%, 53.4%, 53.0% and 50.1%. Finally, in October, 1973, five schools failed to comply, with Black enrollments of 60.2%, 56.8%, 55.3%, 52.9%, and 51.3%. Thus, over the four-year period that the injunction has been in effect, only one school has had a Black enrollment exceeding 60% and only two have had an enrollment exceeding 55%, all in the most recent school year. During that time, the percentage Black enrollment in the district as a whole has increased from 32.8% (in October, 1970) to 40.0% (in October, 1973). Although the cause of this increase was disputed in the district court, see *Spangler* v. *Pasadena City Board of Education*, 375 F. Supp. 1304, 1306, 1307-8 (C. D. Cal. 1974), the increase itself, regardless of its cause, makes deviations from the prescribed quota both more difficult to avoid and less serious once they occur.

The Board did not contribute to the variations caused by the demographic changes in the school district. In fact, the Board attempted to correct the very first deviation (Loma Alta School), but without success because the "tipping" moved faster than the Board could act. The action of the Board did serve, however, to minimize the variations caused by the demographic changes. Judge Wallace took note of the fact that the parties to this litigation had stipulated that these variations did not constitute a violation of the trial court order. The Judge said in footnote 4 to his opinion (App. A32, n. 4):

> In addition, the significance of the district's violation of the "no-majority of any minority" provision of the injunction should be judged in the light of the parties' stipulation, which was not simply that these violations are insignificant, but that they never occurred. While this stipulation was not binding upon the district court, it does indicate, how the

parties interpreted the "no majority of any minority" language in the injunction and whether the deviations are evidence of persisting de jure segregation.

III. The Action Under Review Here.

In 1973, Petitioners brought the action which is the subject of this Petition for Certiorari. Out of concern for diminishing educational quality and out of fear that the Pasadena system would, like that of the District of Columbia or Inglewood, California, for example, become an "integrated" system with almost nothing but minority students in attendance, Petitioners asked the District Court: (1) to be relieved of the necessity for annual revisions of the desegregation plan to assure the "no majority of any minority" requirement as to every school in the system; (2) to be relieved of further judicial supervision of the school system, on the ground that the school system had become and was a unitary school system for a period of four years; and (3) in the alternative, to consider an "Alternative Plan" that made provision for special "magnet" schools with freedom of election by parents to have their children attend these specialized schools. The Alternative Plan is set out in full at 375 F. Supp. at 1309-12. It is summarized in Appendix B hereto, which is taken from Petitioners' brief in the Court of Appeals. The courts below rejected each of the Petitioner's requests and, in so doing, ignored the proposed findings of fact and conclusions of law that the trial court had requested from the Government, as well as those submitted by Petitioners.

A. *The "No Majority of Any Minority" Ruling*. On the question of the requirement of "no majority of any minority," the trial judge was adamant. As Judge Wallace pointed out below (App. A25):

> The district judge interpreted the injunction to require "that at least during my lifetime there should be no majority of any minority in any school in Pasadena." All of us disapprove of this statement but Judge Ely minimizes its significance. Although the district judge made this

> comment in announcing his decision from the bench, he did not depart from it in his published opinion. He allowed only impossibility of compliance as a reason for dissolving or suspending the prohibition against majority enrollments of minority students. So interpreted, the injunction transforms racial balance from a means of remedying de jure segregation into an end in itself, precisely contrary to the principles expressed by the Supreme Court.

The Court of Appeals affirmed the District Court's position, Judge Ely found it valid; Judge Wallace, as indicated above, found it invalid under this Court's judgments. Judge Chambers, who would have found it invalid on direct appeal from the original order, was prepared to hold it valid but only for a short period of time (App. A20):

> I cannot go along with an order continuing, except for a short time, beyond one more reassignment of pupils that is found to be in compliance. Prospectively, I reject the edict that there shall never be a particular school with a "majority of any minority" or a majority of any minority as long as "[the district judge] live[s]."

B. *Continuing Jurisdiction of District Court*. On the question of relieving the Petitioners of further judicial supervision, the Court of Appeals again divided into three parts, resulting in an affirmance of the trial judge's decision. Judge Ely ruled that the supervision could not be lifted because of the minor variations from what Judge Chambers and Judge Wallace believed to be an invalid order. Because of these variances from the "no majority of any minority rule," Judge Ely held that the Petitioners had not attained a unitary system and, therefore, the school district must continue to be governed, not by the school board, but by the district court, even though all the Board's actions were deemed to have been taken in good faith (App. A16, n. 5).

Judge Chambers gave a strange reading to Judge Ely's opinion in order to be able to join that judgment (App. A21):

> I interpret Judge Ely's opinion as requiring a termination of the mandatory injunction within a very short time

after the school board again gets in compliance and I think the message is clear to the district court.

Judge Wallace would have held that continued jurisdiction was invalid as inconsistent with this Court's judgments (App. A28-29):

> Since there is no substantive right to any particular racial balance a perpetual injunction directed toward that goal cannot be justified as a flexible remedy for past de jure segregation. Note, 43 U. Cin. L. Rev. 922, 928 (1974).
>
> The same test that determines whether the injunction should be dissolved also determines whether jurisdiction should be relinquished. Although the Supreme Court has required that jurisdiction be retained "until it is clear that disestablishment has been achieved," *Raney* v. *Board of Educ. of the Gould School Dist.*, 391 U.S. 443, 449 (1968), that requirement is met if the school district proves that de jure segregation has been abolished. Once the school district has met this burden of proof, further intervention by the court is justified only upon a showing of new de jure segregation. *Swann* v. *Charlotte-Mecklenburg Bd. of Educ., supra,* 402 U.S. at 32 (dictum). Because the burden of proof then returns to the plaintiffs, they could just as well file a new action as file a petition for relief in a court that possesses continuing jurisdiction. In addition, because the injunction also is dissolved, jurisdiction need not be retained to supervise compliance. Hence, continued jurisdiction serves no purpose after the school district has shown that de jure segregation has been eliminated.

C. *The Alternative Plan.* The third issue, whether an alternative plan was valid, was, of course, relevant only if petitioners' first requests were properly rejected. Both the trial court and Judge Ely held that the plan was invalid on its face because it contained an element of "freedom of choice."

Judge Chambers did not reach this question at all (App. A21):

> I do not reach the merits of any other plan. This should be left to future adjudication in another case. I have some doubt that one will find any de jure segregation after the decree has been complied with again—if all that is done is to let residence patterns shift by themselves.

Judge Wallace, too, would have left that question for future litigation. Acknowledging the heavy burden of proof of any alternative plan he wrote (App. A29-30):

> The Board must show that the Alternative Plan is not motivated by an intent to segregate and that there is no present or foreseeable segregation which is attributable to any intentionally segregative actions of the school district, either those found in 1970 or any committed thereafter. See *Swann* v. *Charlotte-Mecklenburg Bd. of Educ., supra,* 402 U.S. at 26; Note, 88 Harv. L. Rev. 61, 67-69 (1974).

It is to this trifurcated judgment of the Court of Appeals for the Ninth Circuit that this Petition for Certiorari is directed.

REASONS FOR GRANTING THE WRIT.

I. The Issues Raised Herein Are Basic to the Administration by Federal Courts of School Desegregation Plans. They Are in Need of Authoritative Determination by This Court, Especially in Light of the Patent and Widespread Failure of Existing Plans Either to Effectuate Desegregation or to Afford Adequate Educational Opportunity to Minorities.

The federal courts, in their constitutionally mandated duty to effect desegregation of the public schools of the nation, have behaved laudably but, frequently, ineffectually. That there is a great lack of success in accomplishing either the goals of desegregation or improved educational opportunities cannot be gainsaid. Scholars have documented these failures. See, *e.g., Jencks, Inequality: A Reassessment of the Effect of Family and Schooling in America* (1972); Coleman, Kelly & Moore, *Recent Trends in School Education* (mimeo. 1975). The daily newspapers reveal that, in city after city, desegregation orders have been followed by (1) a major and continued reduction of the number of white students within the system; (2) a continual

reduction in educational achievement in these schools; and (3) the disillusionment and frustration of parents, both black and white, with the unsuccessful efforts of the courts to resolve the school segregation problem and in apparent disregard of the baleful effects on student education. See, *e.g.*, *Busing: Integrationists Now Have Their Doubts*, N. Y. Times, 22 June 1975, § E, p. 16, col. 1; *Rescinding a California Busing Order*, *id.*, p. 6, col. 2; *School Integration Drive Eases in South*, N. Y. Times, 29 June 1975, p. 1, col. 4.

None of this, of course, suggests that the federal courts should withdraw from the duty of effectuating the commands of the Fourteenth Amendment. It does suggest, however, the invalidity of the commitment of the lower federal courts, like those below, to a rigid formula of specified racial balance to be accomplished by extensive busing. A remedy that does not work, however constitutional it may be, does not effect the constitutional mandate for desegregation. Yet, as this case demonstrates, lower federal courts have obdurately refused to consider any alternative to their Procustean plans calling for racial balance as the end and busing as the means. The federal courts' patterns are inconsistent with this Court's rulings.

The lower courts, erroneously certainly, have found their justification for these rigid orders in this Court's decision in *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U. S. 1 (1971). Until this Court reestablishes its ruling in *Swann* that racial balance is a proper factor for consideration but not a constitutional goal and that busing is a permitted but not a compulsory means, federal court desegregation plans will continue to result in chaotic school conditions. Contrary to the views of some federal judges, the purpose of a desegregation decree is not punishment but cure. This case, with its obvious inconsistencies with this Court's ruling in *Swann*, calls on this Court for the elucidation of the proper principles that should govern in this case as well as the myraid of others where similar errors are being committed.

II. The Decision Below Imposed a Permanent Obligation of "Racial Balance" on Every School in the Pasadena System. That Decision Is Inconsistent with This Court's Ruling in Swann.

The trial court in the *Swann* case had ordered "that pupils of all grades [should] be assigned in such a way that as nearly as practicable the various schools at various grade levels have about the same population of black and white students." Quoted, 402 U. S. at 23. This stance evoked from this Court the guiding principle that the courts below in this case have rejected (*id.* at 23-24):

> The District Judge went on to acknowledge that variation "from that norm may be unavoidable." This contains intimations that the "norm" is a fixed mathematical racial balance reflecting the pupil constituency of the system. If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.

Yet, that is exactly the way the trial court in this case has read "the consitutional command." For it, as it plainly stated, racial balance and desegregation were merely different words for the same concept.

It is possible, to construe the original decree in this case, the way this Court construed the trial court decree in *Swann*, "as no more than a starting point in the process of shaping a remedy, rather than an inflexible requirement." 402 U. S. at 25. Indeed, it is apparent that this was the way that it was read by the parties to this controversy and explains the stipulation of all the parties that, although there had been some variations from the "no majority of any minority" rule, there had been no violations of the decree. But this reading was rejected by the trial court and

by the Court of Appeals in favor of an interpretation that the mathematical formula was indeed not "a starting point" but rather "an inflexible requirement."

By this Court's standards then, since the lower courts did "require, as a matter of substantive consitutional right [a] particular degree of racial balancing or mixing," it follows that this "approach [sh]ould be disapproved" and that this Court is "obliged to reverse" the judgment below.

III. The Decision Below Held That a School Board That Has Operated a Unitary School System for Four Years May Not Be Relieved of the Desegregation Injunction and Freed From Further Judicial Supervision Because of Minor Variances Occurring After Racial Balance for All Schools Had Been Achieved, Although the Resulting Variances Were Due to Demographic Changes Unrelated to Any School Board Actions. That Decision Is Inconsistent with This Court's Opinion in Swann.

The question how long a school system must remain under the control and direction of a federal district court after that system has achieved a unitary status remains unresolved by this Court. The Court of Appeals so acknowledged (App. A15), n. 1):

> We note that one of the basic legal issues presented by this appeal, the question of when and under what circumstances a school district may compel a federal district court to relinquish jurisdiction and end its supervision, has not yet been directly addressed by any Court of Appeal [sic] or by the United States Supreme Court.

Certainly that is an important question that will be pressing on this Court for adjudication in light of the large number of school district that have been under judicial control for so long. Direction of an authoritative kind is required.

This Court, has, however, made it clear that the reason given by the lower courts in this case for their refusal to discharge the

school board from supervision is an invalid one. There is no question that the Petitioners conformed to the trial court's order to disestablish an allegedly dual school system and replace it with a unitary system. There is no doubt that the unitary system has been maintained for the entire period since the order was instituted, except that the lower courts assert that the few variations from "no majority of any minority" rule constituted violations. The requirement of such a rule is, however, as already shown, an invalid one under this Court's ruling in *Swann*. Moreover, such variations as did occur were admittedly not the result of any school board action, but the result of demographic changes not attributable to the school board. *Swann* also made it clear that such variations cannot afford a basis either for holding that the unitary system had not been attained or for rejecting Petitioners' claim to be relieved of further direct control by the district court.

In *Swann*, this Court said (402 U. S. at 31-32):

> At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in *Brown I*. The systems would then be "unitary" in the sense required by our decisions in *Green* and *Alexander*.
>
> It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary.

It is clear, therefore, that the reliance of the lower courts on the demographic changes that resulted in minor variations from the "no majority of any minority" order in five of the thirty-five schools in the system cannot afford a basis for refusing to release control over the school board in this case.

IV. The Courts Below Rejected Petitioners' "Alternative Plan" Because: (1) It Contained an Element of "Freedom of Choice" and (2) It Would Not Maintain the Strict Racial Balance for Each School in the System Demanded by the Existent Plan. That Decision Is Inconsistent with Swann and a Misconstruction of Green.

The lower courts here found the proposed Alternative Plan improper on two grounds, both erroneous and both inconsistent with this Court's decisions. One was that the Alternative Plan did not include a continuing mandate for the "no majority of any minority" rule for each school in the system. The trial court pointed out that under the Alternative Plan, eight of the thirty-five schools in the system, could have black majorities of 60%. 375 F. Supp. at 1307, n. 9. But, as we have already shown, the "no majority of any minority" rule was an invalid command of racial balance. It can hardly be said that, with a black school population of 40% and a white school population of 44%, and with a recognized trend toward an increasing black school population, a deviation from the strict racial balance of eight schools because of a 60% black population would make the school system a dual system rather than a unitary one. *Swann* itself certainly tolerated far greater aberrations from the overall ratio than that which would be effected by the Alternative Plan here. *Swann* upheld, in a district where the school populations were 71% white and 29% black, a plan that called for schools with 91% white population and others with a 38% black population. 402 U. S. at 9. The Court acknowledged in *Swann* that even plans with one-race schools were not per se invalid. "In light of the above, it should be clear

that the existence of some small number of one-race, or virtually one-race, schools within a district is not of itself the mark of a system that still practices segregation." 402 U. S. at 26.

The second reason for rejecting the Alternative Plan was that it contains an element, if only an element, of "freedom of choice," which the lower courts read to be barred by *Green* v. *County School Board*, 391 U. S. 430 (1968).

The fact is, of course, that *Green* did not invalidate "freedom of choice" *per se*. "We do not hold that 'freedom of choice' can have no place in such a plan [*i.e.*, a plan to convert a dual system into a unitary system]. We do not hold that a 'freedom-of-choice' plan might of itself be unconstitutional, although that argument has been urged upon us. Rather, all we decide today is that in desegregating a dual school system a plan utilizing 'freedom of choice' is not an end in itself." 391 U. S. at 439-40.

The Court went on to quote from Judge Sobeloff that " 'freedom of choice' is not a sacred talisman; it is only a means to a constitutionally required end, the abolition of a system of segregation and its effects." *Id.* at 440. Thus, the Court held in *Green*, that "freedom of choice" is not a talismanic phrase that either validates or invalidates a plan: "[T]here may well be instances in which it can serve as an effective device." *Ibid.* *Swann* reiterated this position: "[A] freedom of choice concept could well be a valid remedial measure in some circumstances." 401 U. S. at 13.

Thus, what the courts below, in their rush to reject the Alternative Plan, failed to recognize was: (1) *Green* did not bar the utilization of freedom of choice elements in all situations; (2) in *Green*, the freedom of choice concept constituted the entire plan, whereas in this case it is only one element of the plan; (3) in *Green* the utilization of freedom of choice was held ineffective to bring about a unitary system, while here there is already a unitary system and the freedom of choice

element is sought to be used only as a part of a plan to prevent resegregation.

The advantages and disadvantages of the Alternative Plan are, of course, subject to amendments after due consideration by the courts. But the reasons utilized by the lower courts to reject the Alternative Plan in its entirety were plainly inconsistent with the rulings of this Court.

CONCLUSION.

The issues raised herein call for adjudication by this Court both because they are of fundamental and nationwide importance to the administration by the federal courts of desegregation plans and because the judgment below is patently inconsistent with the rulings of this Court. The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

OPINION.

UNITED STATES COURT OF APPEALS
For the Ninth Circuit.

NANCY ANNE SPANGLER, by her father and next friend, JAMES E. SPANGLER, JR., JUDITH R. CLERKE, by her father and next friend, WILTON A. CLERKE, and VIVION ROSTKER, by her father and next friend, SKIPPER ROSTKER, for herself individually and all others similarly situated.
Plaintiffs-Appellees,

and

UNITED STATES OF AMERICA,
Plaintiff-Intervenor-Appellee,

vs.

PASADENA CITY BOARD OF EDUCATION, and BRADFORD C. HOUSER, JOHN T. WELSH and STEVE SALISAN, individually and as Members of the Pasadena City Board of Education,
Defendants-Appellants.

No. 74-2116

Appeal from the United States District Court
for the Central District of California.

Before: CHAMBERS, ELY and WALLACE, *Circuit Judges.*

ELY, *Circuit Judge:*

The appellants, Pasadena [California] City Board of Education (hereafter Board) and some of its officials, individually,

appeal from an Order of the District Court, reported at 375 F. Supp. 1304 (C. D. Cal. 1974), which denied the Board's motions for: (1) relief from the District Court's Order of January 23, 1970, requiring the desegregation of the Pasadena public schools and the District Court's Order of March 10, 1970, which approved the then Board's Pasadena Plan for desegregation; (2) dissolution of the District Court's injunction requiring that there be no school in the School District with a majority of its enrollment composed of students of a minority race; (3) termination of the District Court's continuing jurisdiction of the case; and (4) alternatively, for permission to modify the Pasadena Plan ordered by the court by substituting a so-called Alternative Plan.[1]

It is important at the outset to underscore the narrow ambit of our review, a constriction resulting from the procedural posture in which this appeal is before our court. Neither the Pasadena Plan itself nor the District Court's January 23, 1970, and March 10, 1970, Orders directing the implementation of the plan are here on direct appeal. Nor are we concerned with the correctness of the District Court's original decision in *Spangler* v. *Pasadena City Board of Education*, 311 F. Supp. 501 (C. D. Cal. 1970), and the conclusions drawn therein. The only question before us now is whether the District Court erred in its determination, in denying appellants' 1974 motions, that events and circumstances occurring and existing in Pasadena since the Pasadena Plan was ordered implemented do not justify relief from the January 23, 1970, Decree, relinquishment of the court's continuing jurisdiction over the Board, or the substitution of a substantial alteration of the original Pasadena Plan.

I. Procedural History and Factual Background.

This action was originally instituted on August 28, 1968, by certain Pasadena public school children and their parents as a class action against the Pasadena City Board of Education

of the Pasadena Unified School District and certain officials thereof, seeking injunctive relief from alleged unconstitutional segregation of its public schools. The United States Government, also endeavoring to eliminate the discrimination, was permitted to intervene as a party plaintiff on December 4, 1968. On January 23, 1970, after a nine-day trial, the District Court entered its Decree, enjoining the Board and the Superintendent of Schools "from discriminating on the basis of race in the operation of the Pasadena Unified School District." *Spangler* v. *Pasadena City Board of Education*, 311 F. Supp. 501, 505 (C. D. Cal. 1970). The court required the Board ". . . to prepare and adopt a plan to correct racial imbalance at all levels," and further directed that "[t]he plan shall provide for student assignments in such a manner that, by or before the beginning of the school year that commences in September of 1970 there shall be no school in the District, elementary or junior high or senior high school, with a majority of any minority students." 311 F. Supp. 501 at 505.[2]

In support of the 1970 Decree from which the appellants now seek relief, the District Court found that the Board had adopted a neighborhood school policy and a policy against forced crosstown busing which resulted "in racial imbalance and increasing racial imbalance." *Id.* at 506. Among the facts supporting the court's conclusion that the Board's policy violated the Fourteenth Amendment were findings that: (1) in numerous instances the Board changed attendance areas, changes having the net effect of increasing the percentage of blacks in schools that were already "black" and, correspondingly, increasing the percentage of whites in "white" schools, (*Id.* at 506-509); (2) the Board had consistently rejected proposals from its superintendent, citizens' committees, and other Board members that would result in significantly more racial integration, (*Id.* at 510); (3) the Board "used transportation provided at school district expense to make it possible for white children to avoid attending schools with greater percentages of black students

enrolled than in the District as a whole", (*Id.* at 512); (4) very few black teachers were hired and most were assigned to schools with majority black enrollment (*Id.* at 513-516); (5) there was discrimination in the hiring and promotion of black administrators, (*Id.* at 516); (6) the Board placed transportable classrooms at black schools to accommodate over-enrollment at those schools while adjoining white schools had fewer transportables or none at all, (*Id.* at 518); and (7) the Board granted transfers "which it knew or should have known were wholly or at least in part motivated by racial considerations, including baseless transfers that had the effect of intensifying racial segregation in the Pasadena schools", (*Id.* at 520). Additionally, the court found that during the 1969-70 school year, 85 percent of the District's black elementary school students attended the eight majority black elementary schools, while 93 percent of its white elementary students attended the remaining 21 elementary schools, (*Id.* at 507).

Pursuant to the court's Decree a comprehensive-desegregation plan (commonly called the "Pasadena Plan") was formulated by a task force consisting of various employees of the Pasadena Unified School District, under the direction of the Superintendent of Schools. The Pasadena Unified School District, although relatively small geographically, includes the city of Pasadena, the city of Sierra Madre, the town of Altadena, and various portions of Los Angeles County. Under the Pasadena Plan, as approved by the District Court on March 10, 1970, the District was divided into four ethnically balanced areas. Students are assigned to the schools in the area of their residence "in such a way as to develop an ethnic balance in each school", while retaining at the elementary level the concept of the neighborhood school by permitting students to walk to a nearby school for part of their elementary schooling and be transported as a neighborhood to another school" for the remainder. The plan created primary schools covering grades kindergarten through third (K-3) and elementary schools covering the fourth through

sixth (4-6) grades to replace the old concept of the neighborhood school encompassing kindergarten through the sixth grade (K-6). The plan altered the secondary school structure by shifting the ninth grade from the junior high schools to the senior high schools. Ethnically balanced secondary school attendance zones were drawn in a fashion that prevented any secondary school from having a "majority of any minority students." The plan provided for transportation for all students who attend school outside their normal areas, and students were permitted to transfer from their assigned schools to other schools in cases of "urgent hardship" involving considerations of curriculum, family circumstances, or medical-psychological factors.

At the commencement of the 1970-71 school year the Pasadena Plan was implemented, and it has ostensibly remained in effect since that time. On January 15, 1974, the motion which is the subject of this appeal was filed by the Board, now having a majority of newly elected members. A hearing on the motion was conducted on February 25, 26, 27 and March 1, 1974. On May 15, 1974, the District Court entered its opinion and order denying appellants' motion in its entirety. The District Court refused the requested relief from its Order of January 23, 1970, in view of the opposition which the Pasadena Plan had encountered and the fact that beginning in 1971, only a few months after the supposed implementation of the original plan, the District had violated the "no majority of any minority" portion of the injunction. By the time of the hearing in March, 1974, five Pasadena schools were operating in violation of the no majority of any minority portion of the court's injunction.[3] *Spangler* v. *Pasadena City Board of Education*, 375 F. Supp. 1304, 1306 (C. D. Cal. 1974). The court further found that the Pasadena Plan had not been accorded such cooperation from the Board as would permit an assessment of its educational success or failure, (*Id.* at 1308); that the decline in white enrollment relative to total enrollment in Pasadena Schools since 1970 was not caused by the desegregation Order, since

the decline closely approximated state-wide trends in California, (*Id.* at 1306); that the Alternative Plan was essentially a freedom of choice plan like those which had failed to desegregate Pasadena schools in the past, (*Id.* at 1311); and that it was unrealistic to believe that parents who fled the district because their children were forced to attend school with black children would now voluntarily choose that alternative under the Alternative Plan, (*Id.* at 1308).

II. Relief from the Order of January 23, 1970 and Dissolution of the "No Majority of a Minority" Injunction.

It has long been established that in fashioning and effectuating school desegregation decrees, the courts are to be guided by traditional equitable principles. *Brown* v. *Board of Education*, 349 U. S. 294, 299-300 (1955) (Brown II). " . . . [A] school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right." *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U. S. 1, 15-16 (1971). "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies" *Swann, supra* at 15. It is also firmly established that a federal court which has imposed an injunction also retains the power to suspend or modify it. *System Federation* v. *Wright*, 364 U. S. 642, 646-7 (1961); *United States* v. *Swift & Co.*, 286 U. S. 106, 114 (1932). The oft-quoted test for determining whether enough has been shown to justify the exercise of this power is whether there has been a change in conditions that is "so important that dangers, once substantial, have become attenuated to a shadow." *Swift, supra*, 286 U. S. at 119 (Cardozo, J.). The question is whether modification or dissolution can be made "without prejudice to the interests of the classes whom this particular restraint was intended to protect." *Swift, supra*, 286 U. S. at 118 (Cardozo, J.); or whether changed circumstances have

rendered the injunction "an instrument of wrong." *Lubben* v. *Selective Service System Local Board No. 27*, 453 F. 2d 645, 651 (2nd Cir. 1972). We further note that in making our determination as to whether the District Court abused its "broad" equitable powers by concluding that changed circumstances since 1970 have not attenuated the dangers present at that time "to a shadow", we are compelled to apply the clearly erroneous test to the trial judge's resolution of the factual issues raised by conflicting evidence bearing on the question of changed conditions. Fed. R. Civ. P. 52(a); *United States* v. *Texas Ed. Agency*, 459 F. 2d 600 (5th Cir. 1972); *Craggett* v. *Board of Education of Cleveland City School District, Cuyahoga County, Ohio*, 338 F. 2d 941 (6th Cir. 1964).

Applying the above standards to the case at hand, it would constitute an abuse of our power to hold that the District Court was clearly erroneous in finding that the appellants did not establish such a sufficient change in conditions as would require the court, in the exercise of its discretionary equitable powers, to modify or dissolve its earlier Decree. Accordingly, we affirm the court's denial of the appellants' motion insofar as that motion sought relief from the Orders of January 23 and March 10, 1970, and dissolution of the injunction requiring that there be no school in Pasadena wherein the student body consisted of a majority of a minority race. A careful review of the record reveals abundant evidence upon which the district judge, in the reasonable exercise of his discretion, could rightly determine that the "dangers" which induced the original determination of constitutional infringement in Pasadena have not diminished sufficiently to require modification or dissolution of the original Order. The Pasadena Unified School District has failed to comply with the "no majority of any minority" provision during three of the four years in which the Pasadena Plan has, pursuant to court order, supposed to have been in full effect and operation.[4] In its motion to disolve the original injunction, the present Board has also sought the approval of a plan of the "freedom

of choice" variety which would very likely result in rapid resegregation. A majority of the members of the preent Pasadena City Board of Education ran for election principally on a platform which urged "stop forced busing of students and return them to their neighborhood school."[5] It was against this background that the District Court concluded that to dissolve the court's "no majority of any minority" injunction would "surely be to sign the death warrant of the Pasadena Plan and its objectives." *Spangler* v. *Pasadena City Board of Education*, 375 F. Supp. 1304, 1309 (C. D. Cal. 1974).

In support of their position that circumstances have significantly changed, appellants contended that the Pasadena Plan was responsible for a substantial portion of the "white flight" phenomenon that has occurred since the implementation of the plan. When the Pasadena Plan was first approved by the District Court, Caucasian students constituted a majority of the School District's enrollment (58.3 percent). At present Caucasians constitute a plurality of only 44.0 percent. The District Court rejected the appellants' contention on the basis of evidence that the trends in Pasadena closely approximate the state-wide trends in both segregated and desegregated California schools. Moreover, the Supreme Court has indicated that the existence of a "white flight" phenomenon does not excuse a school system from the constitutional duties imposed by *Brown* and its progeny. When confronted with such a contention in *Monroe* v. *Board of Commissioners of the City of Jackson, Tennessee*, 391 U. S. 450 (1968), the Supreme Court said: "[w]e are frankly told in the Brief that without the transfer option it is apprehended that white students will flee the school system altogether. 'But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.' *Brown II*, at 300." *Id.* at 459.

The appellants also asserted that the Pasadena Plan has proved to be an educational failure because student performance on certain standardized tests has declined, and the performance

of black students on the tests has continued to fall 30 percentage points below that of white students. The Government's expert testified that the appellants achievement charts should be analyzed as a net gain for black students and that, under the Pasadena Plan, the white students had not suffered academically in relation to the national norms. Additional evidence was presented that under the existing Plan there have been few disciplinary problems and that the District has been able to implement a variety of innovative educational programs and alternatives. In the light of this evidence the district judge resolved the conflict against the appellants and refused to conclude that the Pasadena Plan had been demonstrated to be an educational failure.

The appellants have strongly urged that a constitutionally unitary school system has been achieved in Pasadena under the Plan and that the District Court was consequently required to grant their motion because of the following dictum in the opinion of the United States Supreme Court in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U. S. 1, 31-2 (1971):

> "At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in *Brown I*. The system would then be 'unitary' in the sense required by our decisions in *Green* and *Alexander*.
>
> "It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary."[6]

In the years since *Brown* v. *Board of Education*, 347 U. S. 483 (1954), the United States Supreme Court has consistently held that if *de jure*[7] school segregation is shown, there is "an affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green* v. *County School Board*, 391 U. S. 430, 437-8 (1968). *See also, Milliken* v. *Bradley*, 43 U. S. L. W. 3595 (1973); *United States* v. *Scotland Neck Board of Education*, 407 U. S. 484 (1972); *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U. S. 1 (1971); *Monroe* v. *Board of Commissioners*, 391 U. S. 443 (1968); *Raney* v. *Board of Education*, 391 U. S. 443 (1968). "Having once found a violation, the district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation. . . . The measure of any desegregation plan is its effectiveness." *Davis* v. *Board of School Commissioners*, 402 U. S. 33, 37 (1971). The obligation of every school district is to "terminate dual school systems at once and to operate *now and hereafter* only unitary schools." *Alexander* v. *Board of Education*, 396 U. S. 19, 20 (1969) (emphasis added). When viewed from the perspective of this long line of Supreme Court authority, we cannot conscientiously hold that the district judge abused his broad equitable discretion in refusing to modify or dissolve his Decree. His decision was primarily based upon his finding that there had not been a full and genuine implementation of his original Order such as would achieve the elimination of racial discrimination "root and branch." The directive of the dictum in *Swann* by its very terms becomes operative "once the affirmative duty to desegregate has been *accomplished* and racial discrimination is *eliminated* from the system." 402 U. S. 1, 31-32 (1971) (emphasis added). On the specific facts of this case as revealed from the record and reiterated *supra*, it was reasonable for the District Court to conclude that full and effective elimination of racial discrimination had not been achieved during the

three school years following the initial year in which the Pasadena Plan was in effect. If desegregation was "accomplished" or "eliminated" after the implementation of the Pasadena Plan, such was a transitory and temporary achievement, enduring for a period of the utmost brevity.[8]

We think it clear, however, that *Swann* indicates that annual readjustment is not necessary once a court has determined that there has been a full and genuine implementation which has eliminated, with some anticipated permanence, racial discrimination from the system. We must therefore expressly disapprove such portions of the record as suggest that the district judge interprets his injunction to require continuous annual redistricting. In the course of final argument the district judge stated that to him the Pasadena Plan meant . . . "that at least during my lifetime there would be no majority of any minority in any school in Pasadena." [Emphasis added]. This remark, apparently spontaneous, cannot be broadly interpreted, inasmuch as it sugegsts that even after the court has determined that its plan has been effectively implemented and racial discrimination eliminated from the system, a disruptive juggling of students to correct *de minimis* alterations in racial balance in specifiec schools might be required annually, or even day by day. This is precisely what we interpret *Swann* to prohibit.[9]

III. Termination of the Continuing Jurisdiction of the District Court.

The portion of the appellants' motion seeking termination of the District Court's continuing supervision over the actions of the Board is susceptible to the same reasoning followed in Part II of this opinion, *supra*. The Supreme Court's policy in respect to the retention of jurisdiction by a District Court was unambigously announced in *Raney* v. *Board of Education*, 391 U. S. 443, 449 (1967):

> "In light of the complexities inhering in the disestablishment of state-established segregated school systems, *Brown*

> *II* contemplated that the better course would be to retain jurisdiction until it it clear that disestablishment has been achieved."

We hold that the District Court did not clearly err in concluding that it was not yet clear that the contemplated disestablishment of segregation had been achieved in the Pasadena Unified School District. In light of the School District's failure fully to comply with the "no majority of any minority" requirement for three successive years, and the fact that appellants sought to substitute a "freedom of choice" type of plan that the court found would likely result in re-segregation, it was reasonable for the District Court to conclude that all vestiges of *de jure* segregation had not been eliminated. On these facts the court did not abuse its broad equitable discretion in finding an urgent need to retain, for some time, its jurisdiction of the controversy.[10]

IV. The Alternative Plan.

Finally, the appellants moved for modification of the Pasadena Plan to conform with what they have termed their "Alternative Plan." The "Integrated Zone/Educational Alternatives Plan" was approved by a four to one vote of the Board, and that plan applies only to students at the elementary level (grades K-6). Under the terms of the plan, specific elementary school attendance boundries would be replaced with four racially and ethnically balanced zones corresponding to the four existing zones of the Pasadena Plan. *Any student could choose to attend any school in his zone,* with any necessary transportation provided at District expense. The present divided system of separate schools for grades K-3 and grades 3-6 would be replaced with traditional 4-6 schools. Each K-6 school, in addition to the "traditional" program taught there, would have a specialized "mini-school" offering a unique alternative program.[11] These unique alternatives would ostensibly result in voluntary integration by attracting a mix of students from all parts of

the zone, with the schools in each zone competing for attendance. If racial imbalance should occur under the Alternative Plan, a program would then be implemented pairing "sister schools" of opposite ethnic composition for "shared experiences" attended by both schools for one-half day per week.

The appellants have insisted that since the Pasadena Plan was ordered implemented September, 1970, a constitutionally unitary system has been established. Therefore, they argue that the District Court had an obligation to return local control to the School District so long as the proposed modifications did not violate the Constitution. Starting from our earlier premise that the District Court's determination that the School District had not yet effectively discharged its affirmative duty to eliminate segregation was not clearly erroneous, we hold that the District Court's refusal to permit substitution of the appellant's proposed Alternative Plan constituted a reasonable exercise of the court's equitable discretion.

The district judge found that the Alternative Plan was essentially a "freedom of choice" plan, and we are inclined to agree. The Supreme Court has acknowledged, as of 1968, the general "ineffectiveness" of such plans as "a tool of desegregation," *Green* v. *County School Board,* 391 U. S. 430, 440 (1967). The Court has directed that ". . . if there are reasonably available other ways, such for illustration as zoning, promising speedier and more effective conversion to a unitary, nonracial school system, freedom of choice must be held unacceptable." (*Id.* at 441). Our own court reached a similar conclusion in *Kelly* v. *Guinn,* 456 F. 2d 100, 108-9 (9th Cir. 1972) wherein we observed:

> "Freedom of choice plans usually, if not invariably, fail to eliminate school segregation. Such plans rest upon the theory that the school district's entire obligation is to refrain from excluding any student from the school because of race. But once it has been determined that a school district has contributed to the creation and maintenance of

> segregation, neutrality is no longer enough. Then the school district's duty is not limited to the removal of discriminatory bars to school integration; it is charged with an affirmative duty to eliminate segregation. 'Freedom of choice' plans operate 'simply to burden children and their parents with a responsibility which *Brown II* (347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873) placed squarely on the School Board.' The attempt to shift responsibility rarely works. The parents and children are either unable or unwilling to carry the burden. Not suprisingly, they failed to do so in this instance."[12]

There was ample evidence to support the District Court's conclusion that the proposed freedom of choice or 'Alternative Plan" would not discharge the Board's duty to ". . . make every effort to achieve the greatest possible degree of actual deregregation . . . ." *Davis* v. *Board of School Commissioners* 402 U. S. 33, at 37 (1971). Previous efforts by Pasadena to desegregate by "freedom of choice" plans had failed. (*Spangler, supra,* 311 F. Supp. at 510). There was also evidence showing that freedom of choice plans in California locations, the cities of Richmond and San Bernadino, had been wholly unsuccessful.[13] On this record, we could not hold that the court abused its discretion in refusing to permit implementation of an Alternative Plan which it justifiably found highly unlikely to achieve the constitutionally required unitary school system in Pasadena.

AFFIRMED.

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United States Circuit Judges.

FOOTNOTES

Footnote 1.

We note that one of the basic legal issues presented by this appeal, the question of when and under what circumstances a school district may compel a federal district court to relinquish jurisdiction and end its supervision, has not yet been directly addressed by any Court of Appeal or by the United States Supreme Court. *See generally* Craven, Intergrating the Desegregation Vocabulary—Brown Rides North, Maybe, 73 *W. Va. L. Rev.* 1 (1971); Fiss, The Charlotte-Mecklenburg Case—Its Significance for Northern School Desegregation, 38 *U. Chi. L. Rev.* 697 (1971); Comment, 39 *U. Chi. L. Rev.* 421, 436-40 (1972).

Footnote 2

A majority of the Board voted not to appeal the District Court's original Decree. Thereafter a group of parents filed a motion in the District Court for leave to intervene as defendants for the purpose of perfecting an appeal. The motion was denied on March 4, 1970, and the movants appealed to this court. On June 15, 1970, we affirmed. *Spangler* v. *Pasadena City Board of Education,* 427 F. 2d 1352 (9th Cir. 1970).

Footnote 3

As of the beginning of the 1973 school year, the Pasadena Unified School District operated 32 regular schools, having an enrollment of approximately 44 percent Anglo-Caucasions and 40 percent blacks. At the time of the initial implementation of the Pasadena Plan (1970-71) every school in the District was in literal compliance with the court's order. No school had a Negro enrollment as high as 50 percent, and in only three schools was the Negro enrollment greater than the Anglo-Caucasian enrollment. In the 1971-72 school year, one school (Loma Alta) slipped out of compliance with the no majority of any minority standard. In 1972-73 four schools, in violation of the court's order, had a black enrollment in excess of 50 percent, and in seven other schools the black enrollment exceeded that of Anglo-Caucasian students. By 1973-74, five schools were in violation of the court's order (Franklin, Sierra Mesa, Edison, Loma Alta, and Eliot), and sixteen others had a Negro enrollment exceeding that of Anglo-Caucasians.

Footnote 4

In *Kelly* v. *Guinn*, 456 F. 2d 99 (9th Cir. 1972), our court upheld a desegregation order that was very similar to the one in this case. In *Kelly*, the decree specified "that the black enrollment in any elementary school in the Clark County District shall not exceed fifty percent of the total enrollment in such grade." 456 F. 2d at 109.

It should be noted that a trial stipulation in the present case recited that plaintiff and the Government-intervenor *were aware* "of no violations of the Pasadena Plan up to and including the present." The appellee's explain that the sipulation was based on the parties interpretation of the plan, which was inconsistent with the interpretation of the District Court. The District Court was not, of course, obliged to accept, as absolutely controlling, a stipulation of the parties as to a question of law or a mixed question of law and fact. *Estate of Sanford* v. *Commissioner*, 308 U. S. 39, 51 (1939); *Swift & Co.* v. *Hocking Valley Ry*,. 243 U. S. 281, 289 (1917); *Los Angeles Shipbuilding & Drydock Corporation* v. *United States*, 289 F. 2d 222 (9th Cir. 1961). Furthermore, contrary to that of which the parties may have been "aware" at the time of the stipulation, the evidence at the trial established undeniably that significant violations of the Pasadena Plan had previously occurred and continued to exist.

Footnote 5

The appellants claim that the rationale applied by the district judge in denying the appellants' motion was a conclusion that the Board and its new members had acted in "bad faith." In our view the good or bad faith of the school authorities is irrelevant to the issues presented. In upholding the District Court, we have assumed that the actions of the Board and its authorities were, from their viewpoint, committed in good faith.

Footnote 6

The substance of the dictum in Swann was partially codified by the Congress on August 21, 1974:

> *"Effect of Certain Population Changes on Certain Actions.*
>
> Sec. 208. When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within

> such a desegregated school system, such school population changes so occurring shall not, per se, constitute a cause for civil action for a new plan of desegregation or for modification of the court approved plan."

It bears emphasis that the prohibition of the statute is triggered when a court determines that a desegregated unitary system, with no vestiges of a dual system, has been established. This is precisely that which has not yet occurred in this case. It should also be noted that the statute prohibits new plans or modification of the court approved plan. The statute does not purport to cover the question here presented, *i.e.*, whether an existing plan should be continued.

Footnote 7

In their brief appellants state that in the original decision of the District Court directing the School Board to desegregate "there was no finding of state imposed segregation." They further assert that "[t]he constitutional violation found against appellants in 1970 was relatively minor." We think that these declarations are erroneous. The original opinion of the District Court, as we discussed *supra*, detailed a series of purposeful actions by the School Board resulting in *de jure* segregation. The meaning of the term *de jure* is clarified in *Soria* v. *Oxnard School District Board of Trustees*, 488 F. 2d 570, 585 (9th Cir. 1973), wherein we wrote in the context of interpreting *Keyes* v. *School District No. 1, Denver Colorado*, 413 U. S. 189 (1973):

> The Court emphasized that the differentiating factor between so-called *de facto* segregation and the *de jure* segregation held consitutionally impermissible in *Brown* v. *Board of Education* (I), 347 U. S. 483 (1954) was that in the latter case there was present a purpose or intent to segregate."

Footnote 8

In this connection it is highly significant that the United States Court of Appeals for the Fifth Circuit routinely requires that the District Court in a desegregation case should retain jurisdiction for a period of at least *three years* before dismissing such cases upon a determination that the school district has achieved unitary status. In *United States* v. *State of Texas, et al. (San Felipe Del Rio Consolidated Independent School District)*, 509 F. 2d 192 (5th Cir. 1974), the District Court, acting *sua sponte*, without notice or an opportunity for a hearing as to any opposition thereto, found that the objective of a unitary school

system had been achieved and dismissed the action. In doing so, the court expressly relied upon the *Swann* dictum. On appeal the dismissal was vacated and the cause remanded because under the standards enunciated in *Youngblood* v. *Board of Public Instruction*, 448 F. 2d 770 (5th Cir. 1971), the District Courts of the Fifth Circuit are directed to retain jurisdiction for a period not less than three school years, during which the school district is required to file semi-annual reports with the District Court. In *United States* v. *Texas, etc., supra*, only three such reports had been filed, and therefore the Court of Appeals concluded:

> "Once these reports have been filed, then upon proper notice, and following a hearing if one is appropriately sought, the District Court may proceed to determine whether San Felipe Del Rio has achieved unitary status. If it has, then a dismissal is not out of order.
>
> "If, however, such reports have not been or cannot now be filed then the matter may not be considered until three additional semi-annual reports have been filed in due course." (509 F. 2d at 194).

Thus, the Fifth Circuit obviously shares our view that a district judge must not be prematurely divested of his traditional power to supervise his equitable decrees.

Footnote 9

See United States v. *Wilcox County Board of Education*, 494 F. 2d 575, 579 at n. 2 (5th Cir. 1974).

Footnote 10

The appellants have not cited, nor have we found, any case in which a District Court, acting upon a request for dissolution of a detailed desegregation injunction, has relinquished jurisdiction entirely. The procedure that has uniformly been followed when an initial and specific regulatory desegregation injunction has been dissolved has been the reduction of the controversy to an inactive status on the court's docket. The matter may then be re-activated on proper application by any party, or on the court's own motion, should it appear that further proceedings have definitely become necessary. *See, e.g., United States* v. *Georgia*, N. D. Ga. Civil Action No. 12,972 (Order entered July 23, 1973); *United States* v. *County School Board of Sussex County*, E. D. Va., Civil Action No. 606-R (Order filed July 5, 1973); *United States* v. *County School Board of Sussex County*, E. D. Va., Civil Action No. 224-69-R (Order filed July 5, 1973).

Footnote 11

The unique alternatives proposed included a fine and performing arts program, an animal and plant life program, a daily newspaper based program, a community-career awareness program, a social science-science program, a foreign language and cultural program, and an early childhood education program.

Footnote 12

Among the numerous cases in which Courts of Appeals have found "freedom of choice" plans unacceptable are *United States* v. *Georgia*. 466 F. 2d 197 (7th Cir. 1972); *Brunson* v. *Board of Trustees of School District No. 1 of Clarendon County*, S. C. 429 F. 2d 820 ((4th Cir. 1970); *Clark* v. *Board of Education of Little Rock School District*, 426 F. 2d 1035 (8th Cir. 1970), *cert. denied*, 402 U. S. 952 (1971); *Hilson* v. *Outzts*, 425 F. 2d 219 (5th Cir. 1970); *Hall* v. *St. Helena Parish School Board*, 424 F. 2d 320 (5th Cir. 1970); *United States* v. *The Board of Education of Baldwin County*, 423 F. 2d 1013 (5th Cir. 1970); *Stecie* v. *The Board of Public Instruction of Leon County*, 421 F. 2d 1382 (5th Cir. 1970); *Boykins* v. *Fairfield Board of Education*, 421 F. 2d 1330 (5th Cir. 1970); *United States* v. *Choctaw County Board of Education*, 417 F. 2d 838, 841 (5th Cir. 1969); *United States* v. *Jefferson County Board of Education*, 417 F. 2d 834, 836 (5th Cir. 1969); *United States* v. *Lovett*, 416 F. 2d 386, 392 (8th Cir. 1969); *Walker* v. *County Board of Brunswick County*, 413 F. 2d 53, (4th Cir. 1969), *cert. denied*, 396 U. S. 1061 (1970); *United States* v. *Greenwood Municipal Separate School District*, 406 F. 2d 1086 (5th Cir. 1969), *cert. denied*. 395 U. S. 907 (1969).

Footnote 13

The San Bernardino plan attracted only 15 percent of the Negro students, and no whites participated. The Richmond plan had an 11 percent Negro participation over the course of three years and, there again, no whites participated. 375 F. Supp. at 1307. This failure occurred despite the fact that these plans promised that efforts would be made to make minority neighborhood schools attractive to all students and that free transportation was provided for any student wishing to attend school outside his neighborhood.

NANCY ANN SPANGLER, ET AL., *Plaintiffs-Appellees*, and UNITED STATES OF AMERICA, *Plaintiff-Intervenor-Appellee*, v. PASADENA CITY BOARD OF EDUCATION, ET AL., *Defendants-Appellants*.

No. 74-2116

CHAMBERS, *Circuit Judge*, concurring:

This is sad business. We had to have Brown v. the Board of Education[1] because seldom more than lip service was given to the ideal of equal education.

But we cannot perpetually homogenize school children every September. It won't be much of an education for any child if children have to go to a different school every year. Furthermore, a school district surely should not be kept under injunctions of a court forever. We are already involved from time to time in teachers' tenure. Next thing we shall find ourselves grading students' papers—if we keep the schools under a court decree at all times.

Had the first Pasadena decree[2] been appealed to conclusion, I would have held, I believe, once in compliance that the case should have been terminated and any future complaints should be the subject of a new action. But the appeal was dropped. So the school board was left under a continuing duty to homogenize and they have not done it beyond the first massive reassignment of pupils.

Thus, I think we cannot unring the latest orders of the district court retroactively. But I cannot go along with an order continuing, except for a short time, beyond one more reassignment of pupils that is found to be in compliance. Prospectively, I reject the edict that there shall never be a particular school with a "majority of any minority" or a majority of any minority as long as "[the district judge] live[s]." Never is a long time. No one can foresee future contingencies. Furthermore, one man's life is a slender thread for court decrees.

I interpret Judge Ely's opinion as requiring a termination of the mandatory injunction within a very short time after the school again gets in compliance and I think the message is clear to the district court.

I do not reach the merits of any other plan. This should be left to future adjudication in another case. I have some doubt that one will find any de jure segregation after the decree has been complied with again—if all that is done is to let residence patterns shift by themselves.

As indicated above, I concur.

/s/ RICHARD CHAMBERS,
United States Circuit Judge.

FOOTNOTES.

1. 347 U. S. 483 (1954).
2. 311 F. Supp. 501 (C. D. Cal. 1970).

SPANGLER v. PASADENA CITY BOARD OF EDUCATION.

No. 74-2116

WALLACE, *Circuit Judge*, Dissenting:

I respectfully dissent.

My Brother Ely would affirm the district court's decision to continue the desegregation decree in effect and to retain jurisdiction for two reasons: because five schools over three years have had majority enrollments of Black students and because racial imbalance would result from implementation of the Alternative Plan if the injunction were dissolved. Although other reasons might justify continued enforcement of the injunction, these reasons do not. Racial balance is not a constitutional right. *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U. S. 1, 24 (1971). The test for retaining jurisdiction and continuing a desegregation injunction in effect is not the school district's maintenance of an inflexible racial balance but whether "the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system." *Id.* at 31-32. Because the district court did not consider this question, I believe it failed to apply the proper test and, therefore, I would reverse and remand.

The disposition I propose would jeopardize neither the desegregation already achieved nor that still necessary to remedy any de jure segregation which may remain in the Pasadena schools. The injunction would remain in effect pending the outcome of proceedings upon remand, *see Johnson* v. *San Francisco Unified School Dist.*, 500 F. 2d 349, 352 (9th Cir. 1974); *Soria* v. *Oxnard School Dist. Bd. of Trustees*, 488 F. 2d 579, 588 (9th Cir. 1974), *cert. denied*, 416 U. S. 951 (1974), and the Board of Education would bear the burden of proving that all segregation attributable to intentionally segregative action of the school district has been eliminated, *see Keyes* v. *School*

Dist. No. 1, Denver, Colo., 413 U. S. 189, 207-13 (1973); *Swann* v. *Charlotte-Mecklenburg Bd. of Educ., supra*, 402 U. S. at 26. By relying solely upon past or predicted deviations from racial balance by the Pasadena schools, both the district court and Judge Ely needlessly reduce complex constitutional questions to mathematical ratios. *See* Fiss, *The Fate of An Idea Whose Time Has Come: Antidiscrimination Law in the Second Decade after* Brown v. Board of Education, 41 U. Chi. L. Rev. 742, 765-70 (1974). The district court's full consideration of the difficult questions presented by this case would not impede constitutionally required desegregation.

I.

The fundamental flaw in the district court's decision is its premise that there is no difference between de facto and de jure segregation. In its written opinion, the district court takes the position that the two are indistinguishable.[1] Were this true, a holding that the Pasadena schools must always maintain some degree of racial balance would undoubtedly be correct. Likewise, there would be no need to determine whether de jure segregation has been eliminated, since the existence of segregation of any kind would suffice to maintain the injunction in effect. But we have rejected the equivalence of de facto and de jure segregation and have held that segregation in public schools is unconstitutional only if it is de jure segregation; that is, only if it results from intentionally segregative state action. *Johnson* v. *San Francisco Unified School Dist., supra*, 500 F. 2d at 351-52; *Soria* v. *Oxnard School Dist. Bd. of Trustees, supra*, 488 F. 2d at 585-88; *see Berkelman* v. *San Francisco Unified School Dist.*, 501 F. 2d 1264, 1266-67 (9th Cir. 1974). The Supreme Court has impliedly, if not expressly, reached the same conclusion. *Milliken* v. *Bradley*, ... U. S. ....., ..., 42 U. S. L. W. 5249, 5258 (July 25, 1974); *Keyes* v. *School Dist. No. 1, Denver, Colo., supra*, 413 U. S. at 207-09; *Swann* v. *Charlotte-Mecklenburg Bd. of Educ., supra*,

402 U. S. at 17-18, 25-27; *Spencer* v. *Kugler*, 404 U. S. 1027 (1972) (mem.), *aff'g* 326 F. Supp. 1235, 1239-43 (D. N. J. 1971); *cf.* Note, 88 Harv. L. Rev. 61, 70 n. 58 (1974).[2] Thus the justification for the desegregation decree in this case must be the de jure segregation found to exist in 1970, not de facto segregation existing before or after that date.

II.

The justification for the injunction determines its scope. The purpose of a desegregation decree is to remedy the underlying constitutional violation:

> [T]he remedy is necessarily designed, as all remedies are, to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct.

Milliken v. *Bradley, supra,* ..... U. S. at ....., 42 U. S. L. W. at 5258; *accord, Swann* v. *Charlotte-Mecklenburg Bd. of Educ., supra,* 402 U. S. at 16. The Supreme Court has expressly rejected the view that a desegregation injunction is designed to produce any specific degree of racial balance:

> If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.

Swann v. *Charlotte-Mecklenburg Bd. of Educ., supra,* 402 U. S. at 24; *accord, Milliken* v. *Bradley, supra,* ..... U. S. at ....., 42 U. S. L. W. at 5256; *Drummond* v. *Acree,* 409 U. S. 1228, 1230-31 (1972) (Powell, Circuit Justice); *Winston-Salem/ Forsyth Bd. of Educ.* v. *Scott,* 404 U. S. 1221, 1227-29, 1230-31 (1971) (Burger, Circuit Justice) (dictum); *Kelly* v. *Guinn,* 456 F. 2d 100, 110 (9th Cir. 1972), *cert. denied,* 413 U. S.

919 (1973). The district court's decision is inconsistent with these principles.

The district judge interpreted the injunction to require "that at least during my lifetime there would be no majority of any minority in any school in Pasadena." All of us disapprove of this statement but Judge Ely minimizes its significance. Although the district judge made this comment in announcing his decision from the bench, he did not depart from it in his published opinion. He allowed only impossibility of compliance as a reason for dissolving or suspending the prohibition against majority enrollments of minority students.[3] So interpreted, the injunction transforms racial balance from a means of remedying de jure segregation into an end in itself, precisely contrary to the principles expressed by the Supreme Court.

Nor is the district court's interpretation of the injunction permissible because the racial quota requires only "no majority of any minority." Although in *Swann* the Supreme Court considered a different kind of quota (*i.e.,* one requiring that the racial balance in each school approximate that of the district as a whole), the principles applied in that case are equally aplicable here. *Kelly* v. *Guinn, supra,* 456 F. 2d at 110. The Court did not emphasize the kinds of quotas that are permissible but did indicate the proper role of quotas in devising remedies for de jure segregation.

> We see therefore that the use made of mathematical ratios was no more than a starting point in the process of shaping a remedy, rather than an inflexible requirement. . . . Awareness of the racial composition of the whole school system is likely to be a useful starting point in shaping a remedy to correct past constitutional violations. In sum, the very limited use made of mathematical ratios was within the equitable remedial discretion of the District Court.

402 U. S. at 25.

Once the "no majority of any minority" provision of the injunction is deprived of a strict interpretation, the significance of the school district's violations diminishes greatly.[4] The injunction took effect in the fall of 1970. In October, 1970, no school had a majority Black enrollment. In October, 1971, one out of the 35 regular schools in the district had a majority Black enrollment (51.9%). In October, 1972, four schools were in violation, with Black enrollments of 53.9%, 53.4%, 52.0% and 50.1%. Finally, in October, 1973, five schools failed to comply, with Black enrollments of 60.2%, 56.8%, 55.3%, 52.9% and 51.3%. Thus, over the four-year period that the injunction has been in effect, only one school has had a Black enrollment exceeding 60% and only two have had an enrollment exceeding 55%, all in the most recent school year. During that time, the percentage Black enrollment in the district as a whole has increased from 32.8% (in October, 1970) to 40.0% (in October, 1973). Although the cause of this increase was disputed in the district court, *see Spangler* v. *Pasadena City Bd. of Educ.*, 375 F. Supp. 1304, 1306, 1307-08 C. D. Cal. 1974), the increase itself, regardless of its cause, makes deviations from the prescribed quota both more difficult to avoid and less serious once they occur.[5]

III.

The same fundamental error that underlies the district court's inflexible interpretation of the injunction also underlies its failure to consider whether the racial imbalance foreseeable upon dissolution of the injunction is attributable to intentionally segregative actions of the school district. Both errors derive from its erroneous equivalance of de facto with de jure segregation and its neglect of the basic principle that "the scope of the remedy is determined by the nature and extent of the constitutional violation." *Milliken* v. *Bradely, supra,* ..... U. S. at ....., 42 U. S. L. W. at 5258. The corollary of the latter, which is relevant here, is that the need for a desegregation injunction ceases

once de jure segregation has been eliminated. A unanimous Supreme Court has so stated:

> Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary.

Swann v. *Charlotte-Mecklenburg Bd. of Educ., supra,* 402 U. S. at 31-32 (dictum); *cf. Keyes* v. *School Dist. No. 1, Denver, Colo., supra,* 413 U. S. at 211 (dictum).[6]

Although the Alternative Plan is a freedom-of-choice plan and therefore an unlikely remedy for past de jure segregation, *Green* v. *County School Bd. of New Kent County,* 391 U. S. 430, 440 (1968); *Kelly* v. *Guinn, supra,* 456 F. 2d at 108-09, it hardly follows that it is motivated by an intent to segregate or that it necessarily reflects the effects of past de jure segregation. The district court did not decide whether the Alternative Plan created or perpetuated de jure segregation, apparently because it believed that de facto segregation alone amounts to a constitutional violation. *See Spangler* v. *Pasadena City Bd. of Educ., supra,* 375 F. Supp. at 1307 & n.10. Although foreseeable segregation is relevant to the question whether the injunction should be dissolved, it is not dispositive. The question not addressed by the district court is crucial: whether the segregation foreseeable upon dissolution of the injunction is attributable to intentionally segregative actions of the school district.[7]

My Brother Ely also does not address this question, deferring instead to the equitable discretion of the district court upon

the authority of *Swann* v. *Charlotte-Mecklenburg Bd. of Educ., supra,* 402 U. S. at 12, 15-16. Although *Swann* endorses the discretion of the district courts to formulate and modify desegregation decrees, it also places important restrictions upon that discretion, among them the requirement that the injunction be terminated when de jure segregation has been abolished. Indeed, immediately before its discussion of this restriction, the Court states:

> However, in seeking to define the scope of remedial power or the limits on remedial power of courts in an area as sensitive as we deal with here, words are poor instruments to convey the sense of basic fairness inherent in equity. Substance, not semantics, must govern, *and we have sought to suggest the nature of limitations without frustrating the appropriate scope of equity.*

Id. at 31 (emphasis added); *accord, id.* at 6. A sound interpretation of the whole of *Swann* must yield the conclusion that the equitable discretion of the district court continues only so long as de jure segregation persists.

Nor can this restriction be weakened, as my Brother Ely would have it,[8] into a caution against strict enforcement of racial quotas once de jure segregation has been eliminated. Another passage in *Swann,* discussed earlier, requires that racial quotas be flexibly interpreted even before de jure segregation has been eliminated. 402 U. S. at 24-25. The prohibition against "further intervention" cannot mean the same thing. More important, Judge Ely's interpretation of the prohibition against "further intervention" would permit the desegregation decree to be prolonged beyond the continued existence of de jure segregation, contrary to the principle that the scope of the constitutional violation determines the scope of the remedy. *See Milliken* v. *Bradley, supra,* ..... U. S. at ....., 42 U. S. L. W. at 5258; *cf. Keys* v. *School Dist. No. 1, Denver, Colo., supra,* 413 U. S. at 211 (dictum). Since there is no substantive right to any particular racial balance, a perpetual injunction directed toward that goal cannot be justified as a flexible remedy for past de jure segregation. Note, 43 U. Cin. L. Rev. 922, 928 (1974).

The same test that determines whether the injunction should be dissolved also determines whether jurisdiction should be relinquished. Although the Supreme Court has required that jurisdiction be retained "until it is clear that disestablishment has been achieved, "*Raney* v. *Board of Educ. of the Gould School Dist.,* 391 U. S. 443, 449 (1968), that requirement is met if the school district proves that de jure segregation has been abolished. Once the school district has met this burden of proof, further intervention by the court is justified only upon a showing of new de jure segregation. *Swann* v. *Charlotte-Mecklenburg Bd. of Educ., supra,* 402 U. S. at 32 (dictum). Because the burden of proof then returns to the plaintiffs, they could just as well file a new action as file a petition for relief in a court that possesses continuing jurisdiction. In addition, because the injunction also is dissolved, jurisdiction need not be retained to supervise compliance. Hence, continued jurisdiction serves no purpose after the school district has shown that de jure segregation has been eliminated.

IV

The school district's burden of proof, however, is not easily met. The Supreme Court has held that once de jure segregation has been found in one part of a school system, the school district must show that de facto segregation elsewhere in the system is not the result of any intentionally segregative action on its part. *Keyes* v. *School Dist. No. 1, Denver, Colo., supra,* 413 U. S. at 207-13. So too, here,[9] the Board of Education must prove that any segregation reasonably foreseeable upon dissolution of the injunction is not the result of any intentionally segregative actions of the Pasadena Unified School District.[10] The Board must show that the Alternative Plan is not motivated by an intent to segregate and that there is no present or

foreseeable segregation which is attributable to any intentionally segregative actions of the school district, either those found in 1970 or any committed thereafter. *See Swann* v. *Charlotte-Mecklenburg Bd. of Educ., supra,* 402 U. S. at 26; Note, 88 Harv. L. Rev. 61, 67-69 (1974).

V

The heavy burden of proof upon the Board of Education renders the majority's decision all the more difficult to understand. Returning this case to the district court would not hinder constitutionally required desegregation. Instead, it would allow the crucial question in this case to be decided: whether de jure segregation has been eliminated from the Pasadena schools. The majority avoids this issue by deferring to the equitable discretion of the district court but the district court did not reach this question because it erroneously equated de facto with de jure segregation. The district court must eventually decide this question. As Judge Chambers notes in his concurring opinion, the Board of Education will sooner or later renew its motion to dissolve or modify the injunction. Instead of surmising from the record how the district court would have decided a question it did not face, I would reverse and remand for a determination whether de jure segregation still exists in the Pasadena schools.

Therefore, I dissent.

FOOTNOTES

1. *There appears to be, in logic, no distinction between de jure and de facto segregation for our purposes.* "De jure" and "de facto" are only adjectives that give some attempted "legal" distinction to the aims of Brown v. Board of Education I, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), and Brown v. Board of Education II, 349 U. S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955) that *"segregation"* denies equal educational opportunity. *See also,* Keyes v. School District Number One, 413 U. S. 189, 93 S. Ct. 2686, 37 L. Ed. 2d 548 (1973), Mr. Justice Powell, concurring and dissenting.

Spangler v. Pasadena City Bd. of Educ., 375 F. Supp. 1304, 1307 n. 10 (C. D. Cal. 1974) (emphasis in first sentence added). The district judge's statements from the bench reflect the same error.

2. It might be thought that the Supreme Court declined to decide this issue in *Keyes,* by reserving the question "whether a 'neighborhood school policy' of itself will justify racial or ethnic concentrations in the absence of a finding that school authorities have committed acts constituting *de jure* segregation." Keyes v. School Dist. No. 1, Denver, Colo., 413 U. S. 189, 212 (1973). This passage, however, must be interpreted to leave open only the question whether segregated neighborhoods in combination with a neighborhood school policy give rise to a presumption of de jure segregation.

The Court held in *Keyes* that where de jure segregation has been found in one part of a school district, de facto segregation in the remainder of the district is constitutionally permissible, provided the school district can show that such segregation did not result from any intentionally segregative actions on its part. *Id.* at 207-13. Likewise, in *Swann* the Court held that, in a school system undergoing desegregation, a few schools predominantly of one race are permissible if the school district can prove that their racial composition did not result from discriminatory actions on its part. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U. S. 1, 26 (1971). Hence, even when de jure segregation has been found in a school district, de facto segregation is permissible upon a showing that it did not result from intentionally discriminatory actions. *A fortiori,* in the absence of de jure segregation, de facto segregation must also

be permissible. The question left open in *Keyes* is whether the school district must show lack of de jure segregation when a neighborhood school policy, neutral on its face, results in segregation. *See* Ybarra v. City of San Jose, 503 F. 2d 1041, 1042-43 and n. 2 (9th Cir. 1974). *Compare* Johnson v. San Francisco Unified School Dist., 500 F. 2d 349, 351 n. 1 (9th Cir. 1974) (dictum).

3. The Court recognizes that conceivable circumstances exist in which that mandate could not reasonably be met. Pasadena, however, does not present such a circumstance at this time.

Spangler v. Pasadena City Bd. of Educ., 375 F. Supp. 1304, 1307 n. 11 (C. D. Cal. 1974).

4. In addition, the significance of the district's violation of the "no majority of any minority" provision of the injunction should be judged in light of the parties' stipulation, which was not simply that these violations are insignificant, but that they never occurred. While this stipulation was not binding upon the district court, it does indicate how the parties interpreted the "no majority of any minority" language in the injunction and whether the deviations are evidence of persisting de jure segregation.

5. At the hearing, the district court also concluded that the school district had violated the hiring provisions of the injunction but it does not refer to these violations in its written opinion. These violations too would be open to consideration upon remand.

6. Although the statement quoted from *Swann* is dictum, neither the majority nor any other court has refused to rely upon it for that reason.

7. The district court mentions this issue in only two conclusory sentences:

> To [dissolve the injunction] would—in light of the avowed aims of four members of a five-member Board—surely be to sign the death warrant of the Pasadena Plan and its objectives.

Spangler v. Pasadena City Bd. of Educ., 375 F. Supp. 1304, 1309 (C. D. Cal. 1974).

> Unfortunately, I cannot make that finding [that the school district has become unitary], because I think that from the evidence that was presented to me I find still some vestiges that would indicate that the Board has not completely made this School District a unitary school district.

Oral opinion. However, these statements must be taken in the context of the district court's failure to abandon its erroneous equivalence of de facto with de jure segregation.

8. Judge Chambers apparently does not concur in this portion of Judge Ely's opinion. Judge Ely apparently would enforce the "no majority of any minority" provision of the injunction indefinitely but would allow de minimis deviations after de jure segregation has been eliminated. Judge Chambers apparently would abandon the injunction entirely once de jure segregation has been abolished.

9. The de jure segregation found in 1970, and not reviewed by us, was attributed in part to the school district's failure to compensate for residential segregation. In turn, this residential segregation was attributed in part to public and in part to private discrimination. Spangler v. Pasadena City Bd. of Educ., 311 F. Supp. 501, 504-05, 512-13, 522 (C. D. Cal. 1970). However, the only constitutional violations found by the district court were those of the school district in failing to compensate for residential segregation. *Id.* at 524. Likewise, no evidence was presented in the proceedings now on appeal that state entities other than the school district had committed constitutional violations. Hence, this case does not present the question whether constitutional violations of other state entities would justify continued enforcement of an injunction against the school district. *See* Milliken v. Bradley, ____ U. S. ____, ____ n. 7, 42 U. S. L. W. 5249, 5252 n. 7 (July 25, 1974); *id.* at ____, 42 U. S. L. W. at 5261 (Stewart, J., concurring); Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U. S. 1, 22-23 (1971); Ybarra v. City of San Jose, 503 F. 2d 1041, 1043 (9th Cir. 1974).

10. I do not believe that proving an absence of de jure segregation requires no more than proving momentary compliance with a desegregation injunction. The school district must prove that all present *and reasonably foreseeable* segregation is divorced from any intentionally segregative action on its part.

Further, when the school board presents a new plan to replace the injunction, proving momentary compliance leaves the most difficult elements of its case unproved: first, that the plan to replace the injunction lacks any segregative intent; and second, that any segregation reasonably foreseeable upon implementation of the plan is not attributable to any past, intentionally segregative actions on its part. As the Supreme Court has made clear, such conclusions are not easily proved. Keyes v. School Dist. No. 1, Denver, Colo., 413 U. S. 189, 207-13 (1973).

APPENDIX B.

SUMMARY OF "ALTERNATIVE PLAN"

In order to approach these problems from a fresh point of view, the School Board, with the assistance of the staff, devised an overall educational program commonly known as the "Alternative Plan". [Exhibit L]. By a vote of four to one, the Board approved the Alternative Plan and set about its implementation. [R. T. 101]. The principal features of the Alternative Plan are:

(1) It applies only to grades kindergarten through six.

(2) It reinstates the K-6 school and abolishes the present bifurcated system of having separate schools for grades kindergarten through three and grades four through six.

(3) Each school, in addition to its traditional program, will have a specialized "mini-school". The curriculum and size of the mini-schools would be determined by parent and student interest. Programs would vary among schools and would include a fine and performing arts program. Other programs are listed at C.T. 160-62.

(4) Any student may attend any school in his area. The ethnically-balanced areas are retained from the Pasadena Plan.

(5) Transportation will continue to be furnished at District expense.

(6) Mini-school programs will be allocated among the various schools so as to maximize integration within the School District.

(7) Schools will be paired with other schools in the District and students from each pair of schools will jointly attend "shared experiences." This program will be implemented only if racial imbalance occurs at any school.

(8) All other features of the Pasadena Plan will be retained. Therefore, hiring, promotion, construction, transfer and grouping policies will all be administered so as to enhance racial balance within the District.

Supreme Court, U. S.
FILED
DEC 31 1975
MICHAEL RODAK, JR., CLERK

JOINT APPENDIX.
[January 2, 1976]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-164

PASADENA CITY BOARD OF EDUCATION, ET AL.,
Petitioners,

vs.

NANCY ANNE SPANGLER, ET AL.,
Respondents,

and

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

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JOINT APPENDIX.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES.

August 28, 1968. Plaintiffs' original complaint filed in the United States District Court for the Central District of California.

October 8, 1968. Plaintiffs' first amended complaint filed.

November 19, 1968. United States of America, as plaintiff-intervenor, filed motion to intervene and to add parties defendant.

December 6, 1968. Order entered granting motion of United States of America to intervene.

February 12, 1969. Defendants filed answer to plaintiffs' first amended complaint and answer to complaint in intervention.

January 6, 1970—January 20, 1970. Trial held before the United States District Court for the Central District of California. (Nine days).

January 23, 1970. Judgment and order entered in favor of plaintiff-intervenor and plaintiffs, and against defendants.

February 18, 1970. Defendants filed submission of plan.

March 2, 1970. Defendants filed submission of amendment to plan.

March 10, 1970. Order entered approving defendants' plan for integration.

March 12, 1970. Findings of fact and conclusions of law filed.

August 21, 1970. Defendants filed alternative plan for reorganization of secondary schools.

August 31, 1970. Stipulation and order filed and entered implementing defendants' alternative plan for reorganization of secondary schools.

January 13, 1974. Defendants filed motion for (1) relief from court's judgment, (2) dissolution of court's injunction, (3) termination of court's continuing supervision over the Pasadena City Board of Education, and, alternatively (4) modification of the plan of integration submitted February 18, 1970.

February 25, 1974. Trial stipulation filed.

February 25, 1974—March 1, 1974. Hearings held before the United States District Court for the Central District of California. (Four days).

March 1, 1974. Defendants' motion for relief, dissolution, termination, and modification denied.

May 3, 1974. Court's opinion and order denying defendants' motion, deemed by the court to constitute its findings of fact and conclusions of law, filed. Judgment entered as of May 2, 1974.

May 9, 1974. Defendants' notice of appeal filed.

June 13, 1974. Defendants' amended notice of appeal filed.

May 5, 1975. Opinion of the United States Court of Appeals for the North Circuit filed.

JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA.

Entered 23 January 1970.

In accordance with the Findings of Fact and Conclusions of Law filed herein:

IT IS ORDERED, ADJUDGED, AND DECREED that the defendants, Pasadena City Board of Education, Mrs. LuVerne LaMotte, Albert C. Lowe, Bradford C. Houser, John T. Welsh, and Joseph J. Engholm, as members of the Pasadena City Board of Education, and Ralph W. Hornbeck, as Superintendent of Schools for the Pasadena Unified School District, and each of them, their agents, officers, employees, successors, and all persons acting in concert or participation with them are enjoined from discriminating on the basis of race in the operation of the Pasadena Unified School District.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the above-named defendants, and each of them, their agents, officers, employees, successors, and all persons acting in concert or participation with them are enjoined from failing to prepare and adopt a plan to correct racial imbalance at all levels in the Pasadena Unified School District. Defendants are to submit that plan to the Court by February 16, 1970. The plan shall include programs for the assignment, hiring, and promotion of teachers and other professional staff members in such a manner as to reduce racial segregation throughout the District. The plan shall include procedures to be followed and goals to be attained in connection with the location and construction of facilities, both permanent and transportable, that will reduce racial segregation in the District. The plan shall provide for student assignments in such a manner that, by or before the beginning of the school year that commences in September of 1970 there shall be no school in the District, elementary or junior high or senior high school, with a majority of any

minority students. The plan shall indicate specifically the expected enrollment by race, at each school in the District at the time the plan is implemented.

The Court retains jurisdiction of this cause in order to continue to observe and evaluate the plans and the execution of the plans of the Pasadena Unified School District in regard to the hiring, promotion, and assignment of teachers and professional staff members, the construction and location of facilities, and the assignment of students.

Claim for attorneys' fees made on behalf of the plaintiffs is denied.

Plaintiffs' costs are taxed against the defendants, and each of them, in the amount of $.....

Plaintiff-intervenor's costs are taxed against the defendants, and each of them, in the amount of $.....

ORDERED: This 22 day of January, 1970.

/s/ MANUEL L. REAL,
United States District Judge.

DEFENDANTS' SUBMISSION OF PLAN.

Filed 18 February 1970.

In accordance with the judgment and order of this Court entered January 23, 1970, defendant Pasadena City Board of Education hereby files with and submits to this Court its "Plan for Integration of the Pasadena Unified School District", attached hereto as Exhibit "A" and incorporated herein by reference.

Dated: February 18, 1970.

POLLOCK, PALMER & METZLER,
JOHN P. POLLOCK,
JOHN ANDREW MILLER,
By /s/ JOHN ANDREW MILLER,
John Andrew Miller,
Attorneys for Defendants.

PLAN FOR THE INTEGRATION

OF THE

PASADENA UNIFIED SCHOOL DISTRICT

Pasadena Unified School District
Pasadena, California
February 18, 1970

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Part I.

Student Assignment.

Introduction.

Ethnic imbalance in certain schools of the Pasadena Unified School District has increased in recent years. In 1963, neighboring La Canada withdrew from the Pasadena school district, resulting in the loss of more than 600 Anglo-Caucasian students from John Muir High School.

In the past seven years, the main factor contributing to the increase of Negro students in certain schools has been the immigration of large numbers of Negroes in certain housing areas of the Pasadena school district, and the emigration of Anglo-Caucasians.

In the seven years from May 1962 to October 1969, the total Negro enrollment in the schools increased from 5,252 to 9,173, a net gain of 3,921 students, while the percentage rose from 17.3% to 30.0%, an increase of 12.7% of the total enrollment. The number of Anglo-Caucasian pupils decreased from 22,463 to 17,859 during this same period, a drop of 4,604 students. The percentage declined from 73.8% to 58.3%, or a decrease of 15.5% of the total enrollment. "Others" (Oriental, Spanish-surname, et al) increased from 2,703 to 3,590, a net gain of 887, while the percentage rose from 8.9% to 11.7% of the total enrollment.

Over the years, the Board of Education has taken steps designed to gain better ethnic balance. In September, 1969, the superintendent commissioned a Master Planning Committee to develop a plan to assure an educational environment in each school conducive to equal educational opportunities for all pupils, which would provide more comprehensive and integrated education at all levels, and could be implemented without passage of a bond election.

In December, 1969, the Board of Education amended the By-Laws and Policies of the Board of Education to include the following: ". . . it is the policy of the Pasadena City Board of Education to provide integrated education at all levels."

The plan to integrate the Pasadena Unified School District at all levels presented here meets the specifications of Federal District Court Judge Manuel Real in his decision of January 20, 1970. This plan represents the work and thinking of the Pasadena City Board of Education, the superintendent, and the staff under his direction. The diligent efforts of the State Department of Education's Bureau of Intergroup Relations have been of great help as has the work of so many Pasadena principals and teachers. All available information has been considered in the development of this plan. The changes included will not only facilitate integration, but will move the district in the direction of greater quality education.

As additional information is obtained, it may be necessary to make minor modifications and adjustments.

Elementary Schools.

Criteria

The district plan to integrate the elementary school is predicated on the following criteria:

1. All schools should have populations that are as similar as possible to the ethnic make-up of the entire district.
2. Neighborhoods should be maintained so that, essentially, children will walk to a nearby school for part of their elementary schooling and be transported as a neighborhood to another school for the balance.
3. The shortest traveling distances to effect integration should be used.
4. Optimum use should be made of existing facilities.

5. Population trends and future mobility should be taken into consideration in building a plan for permanence.

Plan

The Pasadena Unified School District will be divided into four ethnically balanced areas. Schools within each area will be designated either primary or upper grade schools. Within each area students will be assigned to primary and upper grade schools in such a way as to develop an ethnic balance in each school. Students will walk to a nearby school for part of their elementary schooling and be transported with students in their neighborhoods to another school to provide ethnic balance. The estimated result of such a plan is indicated on the charts which follow. The charts show which schools within each area are designated primary and upper grade, the estimated enrollment of each school, and the estimated ethnic distribution percentages.

Rationale

The entire Pasadena Unified School District will be divided into four areas—A, B, C, D, extending east to west across the city. The decision to divide from east to west was made because the minority population is moving east.

If this population continues to move eastward, the ethnic balance that has been achieved in these areas will be maintained for several years. Each year the areas will be reviewed to assure that the ethnic balance is maintained.

Within each area the district will maintain individual school zones. A child will be assigned to either primary school or upper grade school according to grade level and zones.

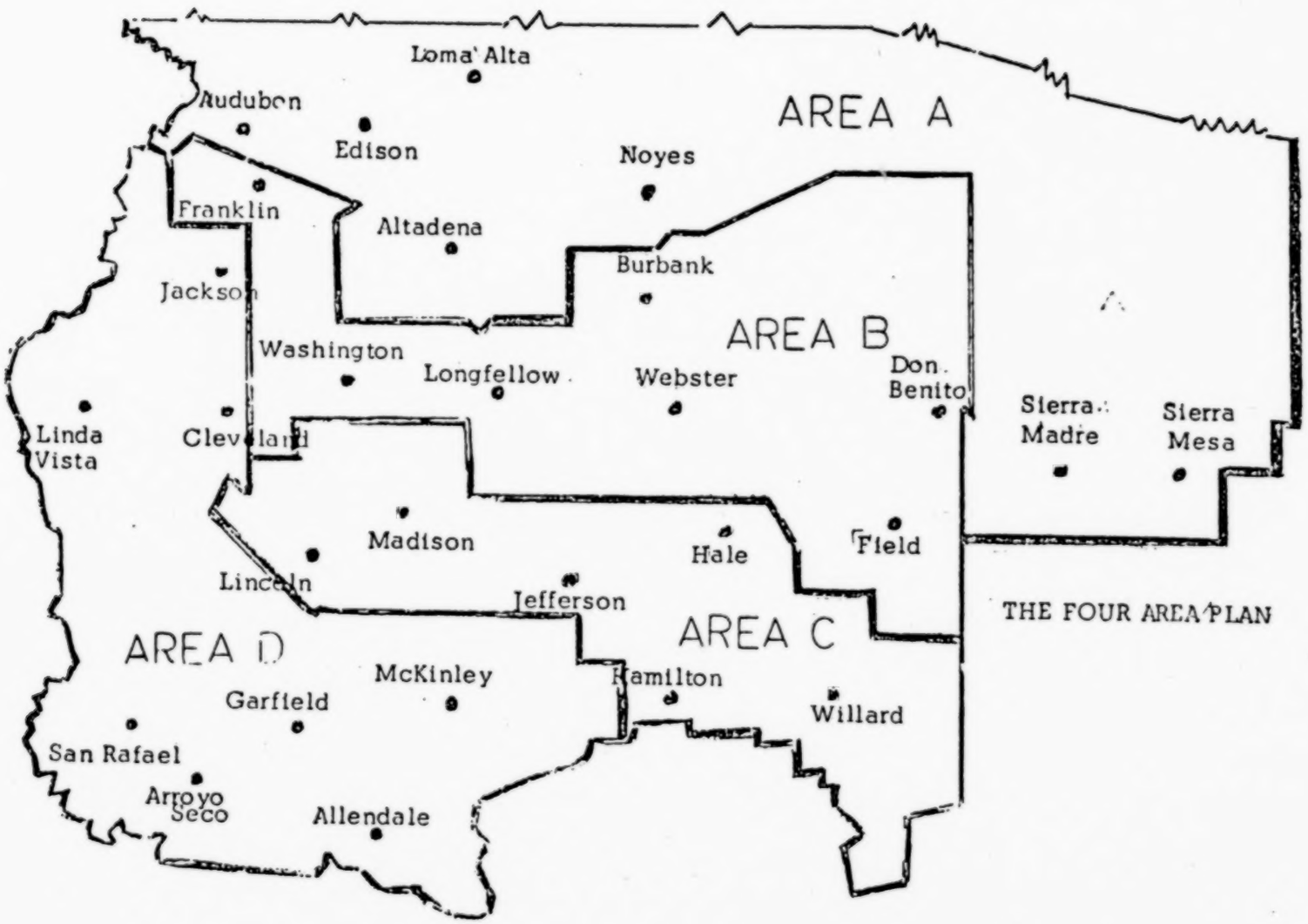
The reorganization of elementary schools into primary schools (K-3) and upper schools (4-6) will provide specialization which is important to guarantee improvement in basic skills. Research indicates that some type of primary unit is presently being used by 18% of the public schools in the United States. Pasadena's

K-6 elementary schools have usually been divided into two groups—lower and upper grades—and it now seems appropriate that the entire district be divided into primary and upper.

It should be noted that Arroyo Seco and Roosevelt school facilities are not included in these plans for the following reasons:

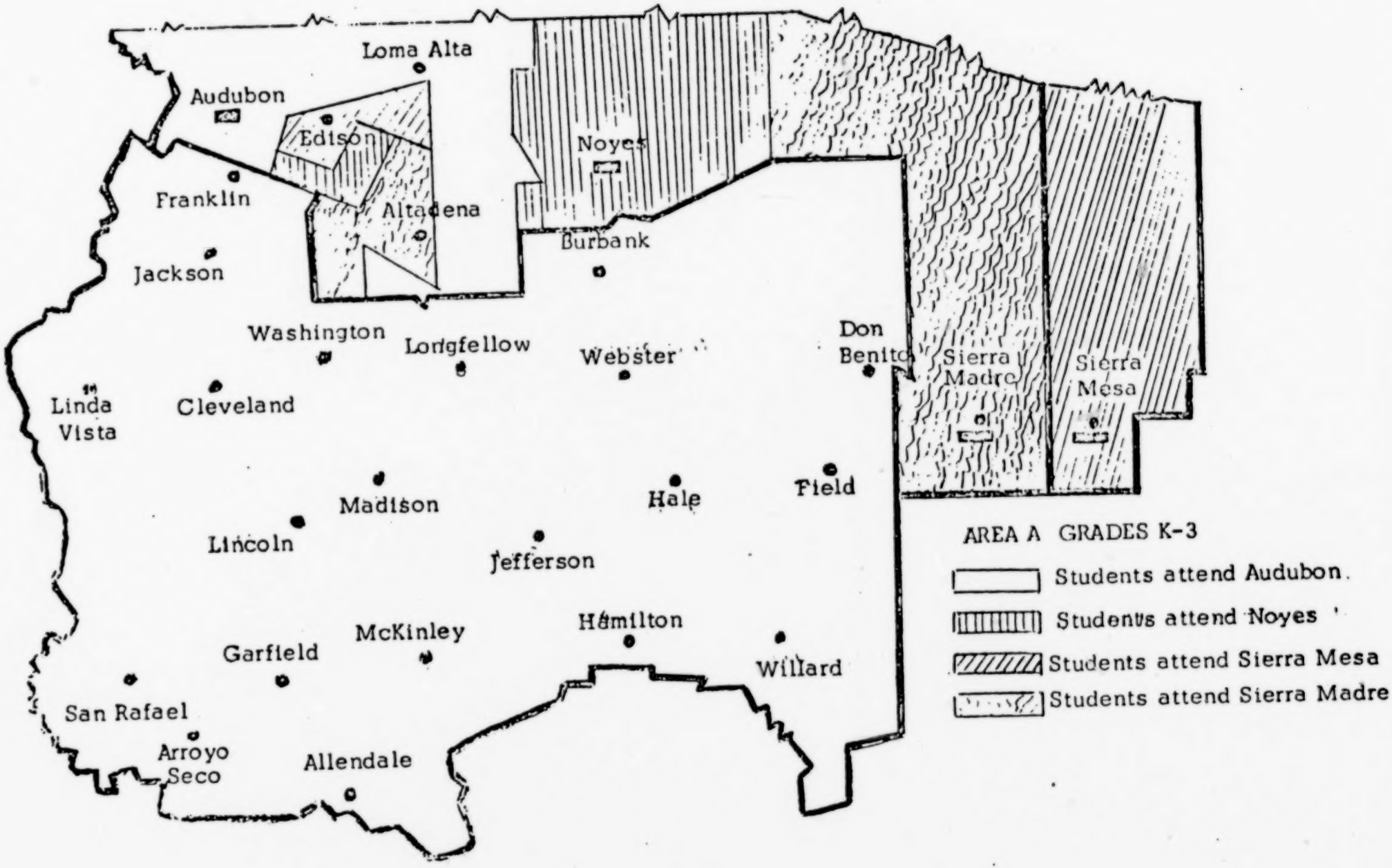
Arroyo Seco—The decision on the reconstruction of this school is pending, awaiting an appraisal report on and consideration of the feasibility of sale of Garfield School.

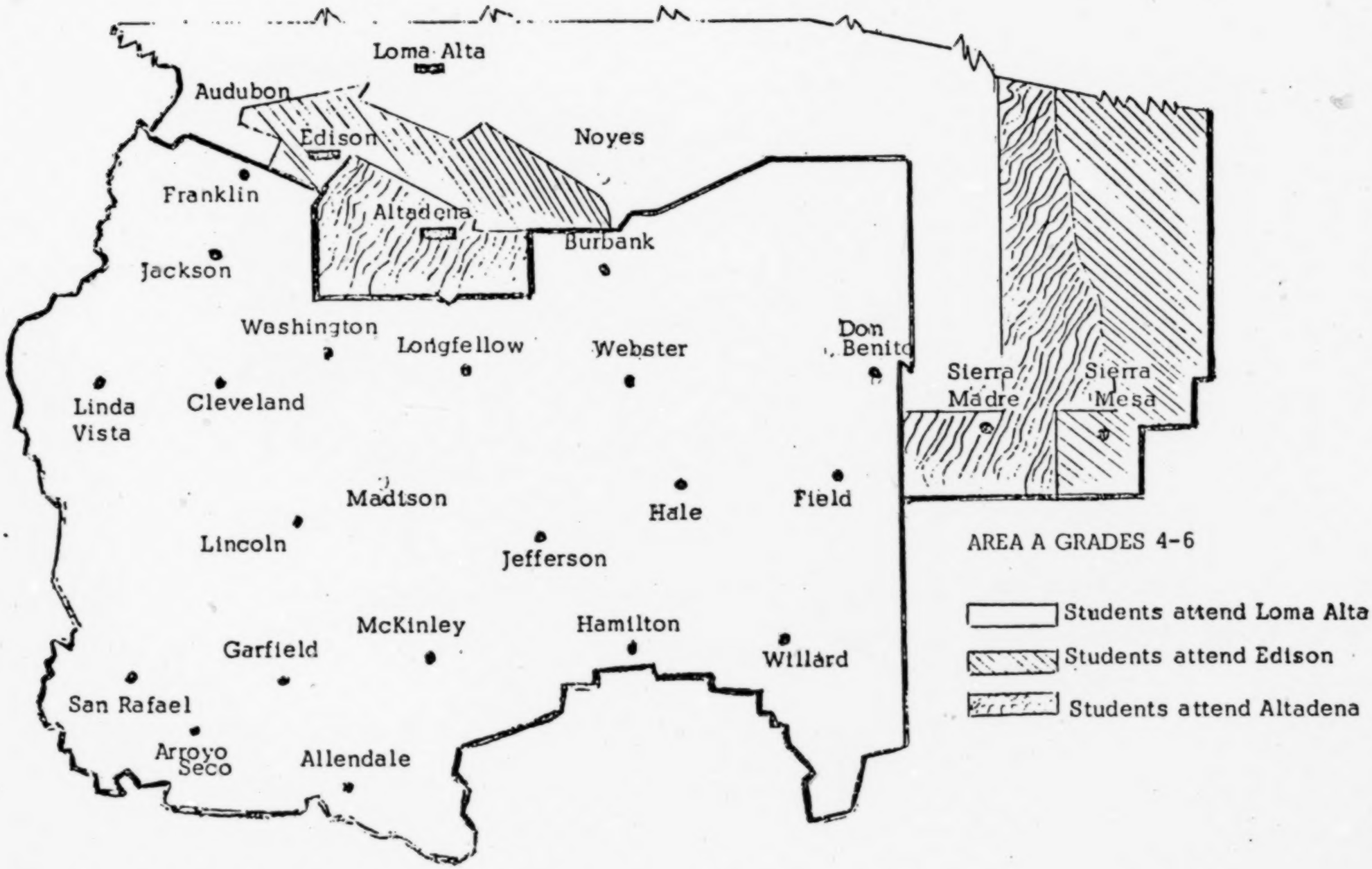
Roosevelt—The specially equipped school currently serves physically and severely mentally handicapped youngsters from the entire district.



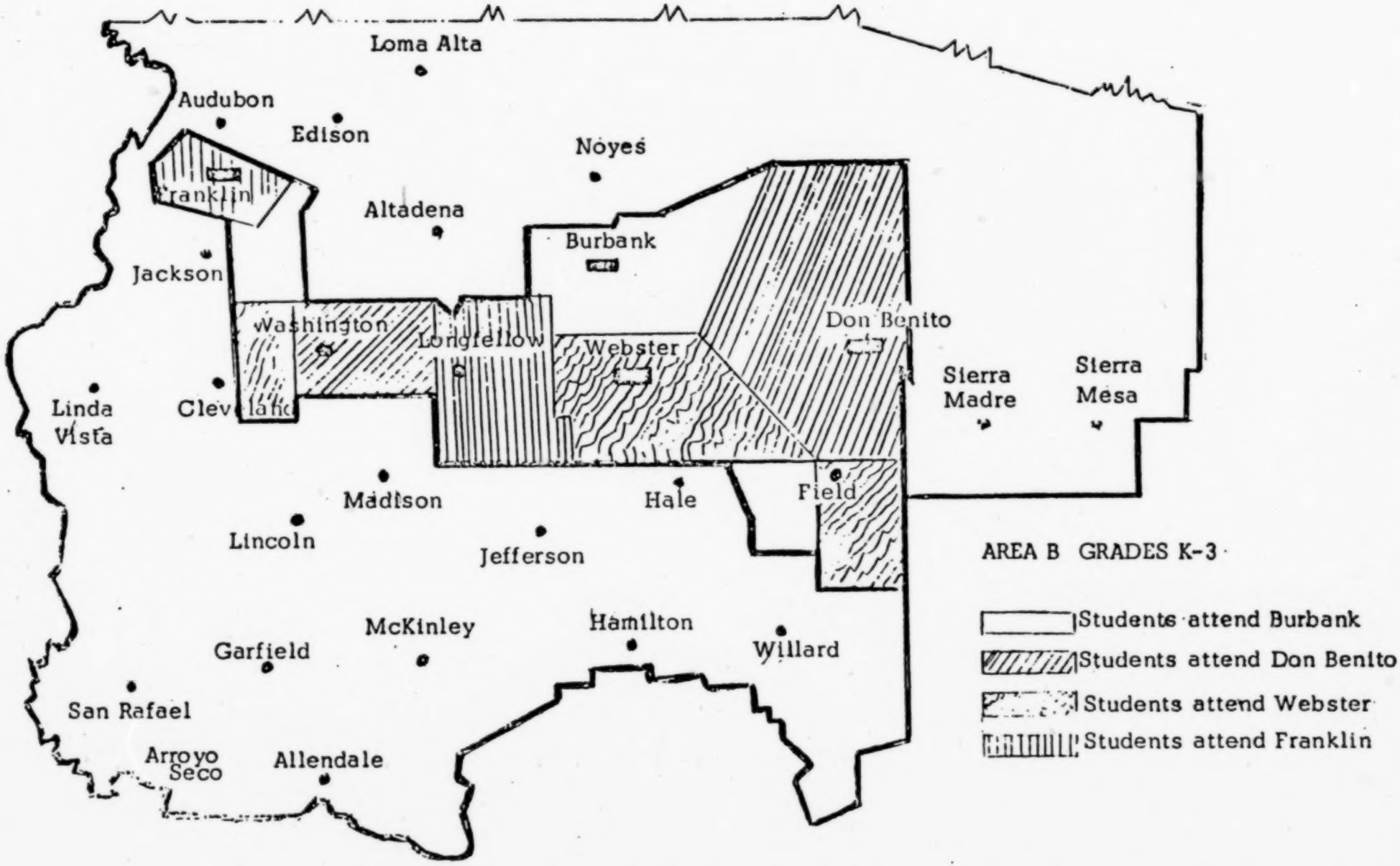
THE FOUR AREA PLAN

AREA "A"	Ethnic Distribution (Per cent) 1970-71					Estimated Enrollment 1970-71	1969-70 Fourth School Month Enroll. Gr. 1-6		
	Anglo-Cauc.	Negro	Spanish Sur.	Orient.	Other			Ethnic Distrib. %C&O	% N
Grades Kindergarten - Three									
AUDUBON - Primary School	53.6	35.0	7.8	2.6	1.0	704	584	34	66
NOYES - Primary School	58.2	32.8	5.5	2.3	1.2	429	315	99	1
SIERRA MADRE - Primary School	54.4	35.6	6.3	2.7	1.0	650	543	100	0
SIERRA MESA - Primary School	49.3	35.0	12.3	2.4	1.0	565	438	100	0
Grades Four - Six									
ALTADENA - Upper Grade School	54.7	31.0	10.3	2.4	1.3	722	834	71	29
EDISON - Upper Grade School	56.8	33.9	4.4	2.6	1.0	568	631	39	61
LOMA ALTA - Upper Grade School	55.2	34.4	8.2	1.5	.5	633	554	75	25


Loma Alta
Audubon
Edison
Noyes
Franklin
Altadena
Burbank
Jackson
Washington
Longfellow
Webster
Don Benito
Sierra Madre
Sierra Mesa
Linda Vista
Cleveland
Madison
Hale
Field
Lincoln
Jefferson
McKinley
Hamilton
Garfield
Willard
San Rafael
Arroyo Seco
Allendale
AREA A GRADES K-3
Students attend Audubon.
Students attend Noyes
Students attend Sierra Mesa
Students attend Sierra Madre


Loma Alta
Audubon
Edison
Noyes
Franklin
Altadena
Burbank
Jackson
Washington
Longfellow
Webster
Don Benito
Sierra Madre
Sierra Mesa
Linda Vista
Cleveland
Madison
Hale
Field
Lincoln
Jefferson
McKinley
Hamilton
Garfield
Willard
San Rafael
Arroyo Seco
Allendale
AREA A GRADES 4-6
Students attend Loma Alta
Students attend Edison
Students attend Altadena

AREA "B"	Ethnic Distribution (Per cent) 1970-71					Estimated Enrollment 1970-71	1969-70 Fourth School Month Enroll. Gr. 1-6		
	Anglo - Cauc.	Negro	Spanish Sur.	Orient.	Other			Ethnic Distrib. % C&O	% N
Grades Kindergarten - Three									
BURBANK - Primary School	56.3	34.0	8.3	1.5	0	618	535	98	2
DON BENITO - Primary School	57.4	34.0	7.3	1.1	.3	741	539	95	5
FRANKLIN - Primary School	49.1	37.9	10.6	2.7	.3	700	609	18	82
WEBSTER - Primary School	61.6	33.9	3.3	1.1	.4	792	678	93	7
Grades Four - Six									
FIELD - Upper School	56.6	35.6	5.2	1.9	.7	664	541	98	2
LONGFELLOW - Upper School	55.8	31.8	8.9	2.7	.7	784	1129	89	11
WASHINGTON - Upper School	59.3	36.1	2.6	1.6	.4	681	1144	9	91


Loma Alta
Audubon
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Noyes
Franklin
Altadena
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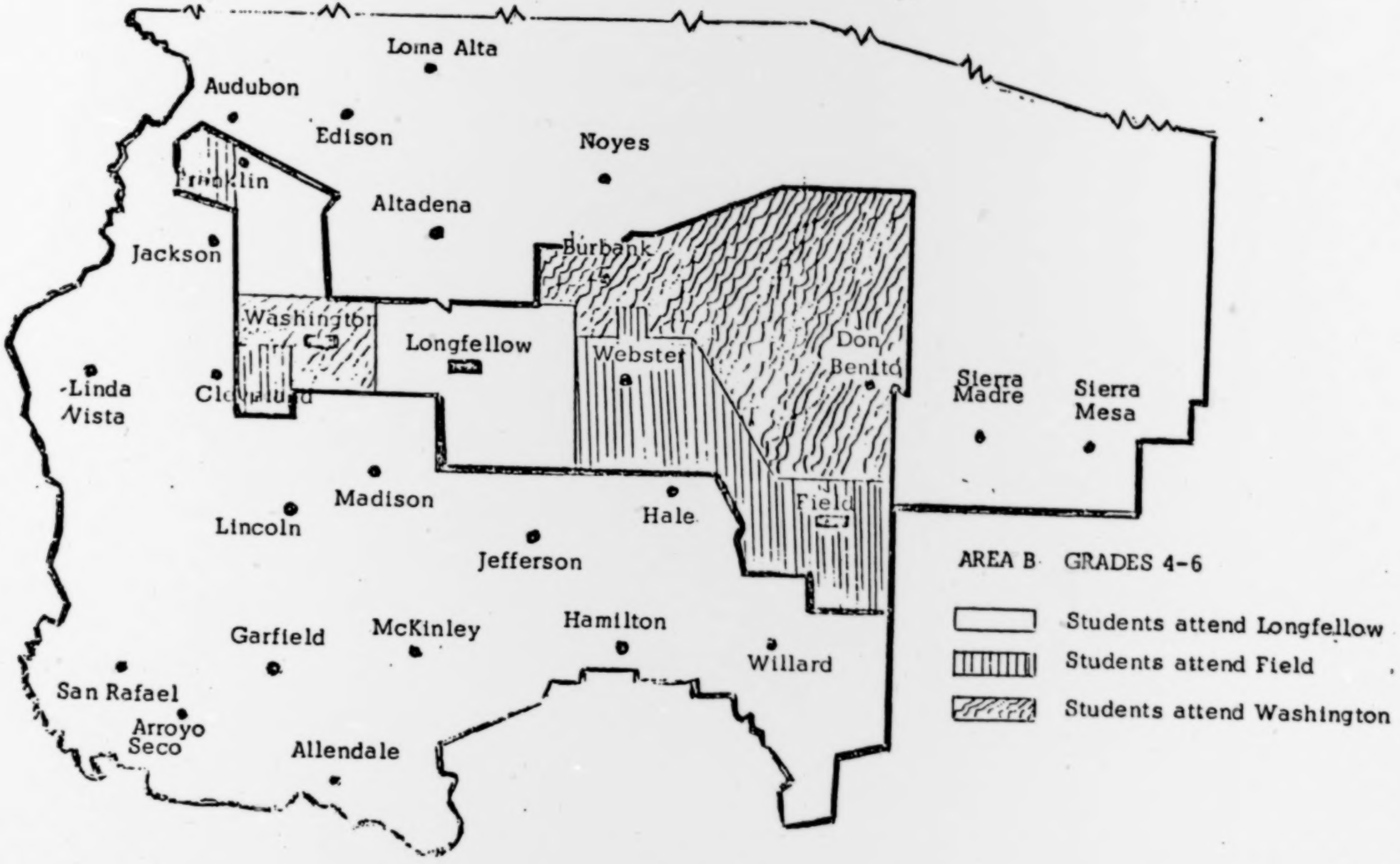
Don Benito
Sierra Madre
Sierra Mesa
Linda Vista
Cleveland
Madison
Hale
Field
Lincoln
Jefferson
McKinley
Hamilton
Garfield
Willard
San Rafael
Arroyo Seco
Allendale
AREA B GRADES K-3
Students attend Burbank
Students attend Don Benito
Students attend Webster
Students attend Franklin


Loma Alta
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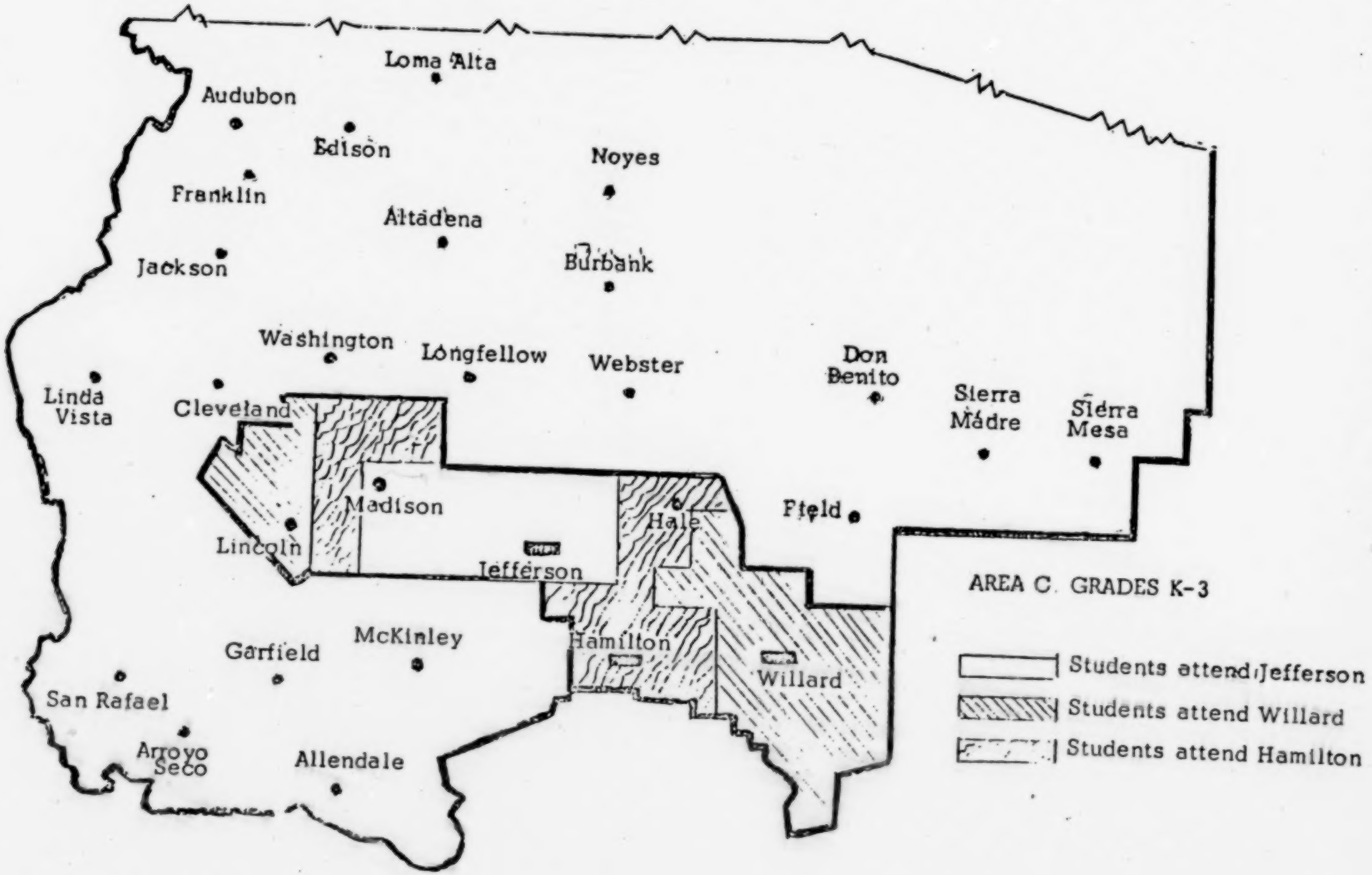
Don Benito
Sierra Madre
Sierra Mesa
Linda Vista
Madison
Lincoln
Hale
Field
Jefferson
Garfield
McKinley
Hamilton
Willard
San Rafael
Arroyo Seco
Allendale
AREA B GRADES 4-6
Students attend Longfellow
Students attend Field
Students attend Washington

AREA "C"	Ethnic Distribution (Per cent) 1970-71					Estimated Enrollment 1970-71	1969-70 Fourth School Month Enroll. Gr. 1-6		
	Anglo.-Cauc.	Negro	Spanish Sur.	Orient.	Other			Ethnic Distrib. % C&O	% N
Grades Kindergarten - Three									
HAMILTON - Primary School	47.1	30.6	17.7	2.1	2.3	846	596	99	1
JEFFERSON - Primary School	47.7	23.7	22.6	3.1	2.7	769	857	94	6
WILLARD - Primary School	53.8	36.8	7.7	1.0	.6	891	824	100	0
Grades Four - Six									
HALE - Upper School	52.7	33.3	10.6	1.7	1.7	480	545	90	10
LINCOLN - Upper School	53.6	30.6	14.1	.9	.6	663	797	19	81
MADISON - Upper School	51.7	25.6	18.3	1.2	3.0	557	855	37	63


Loma Alta
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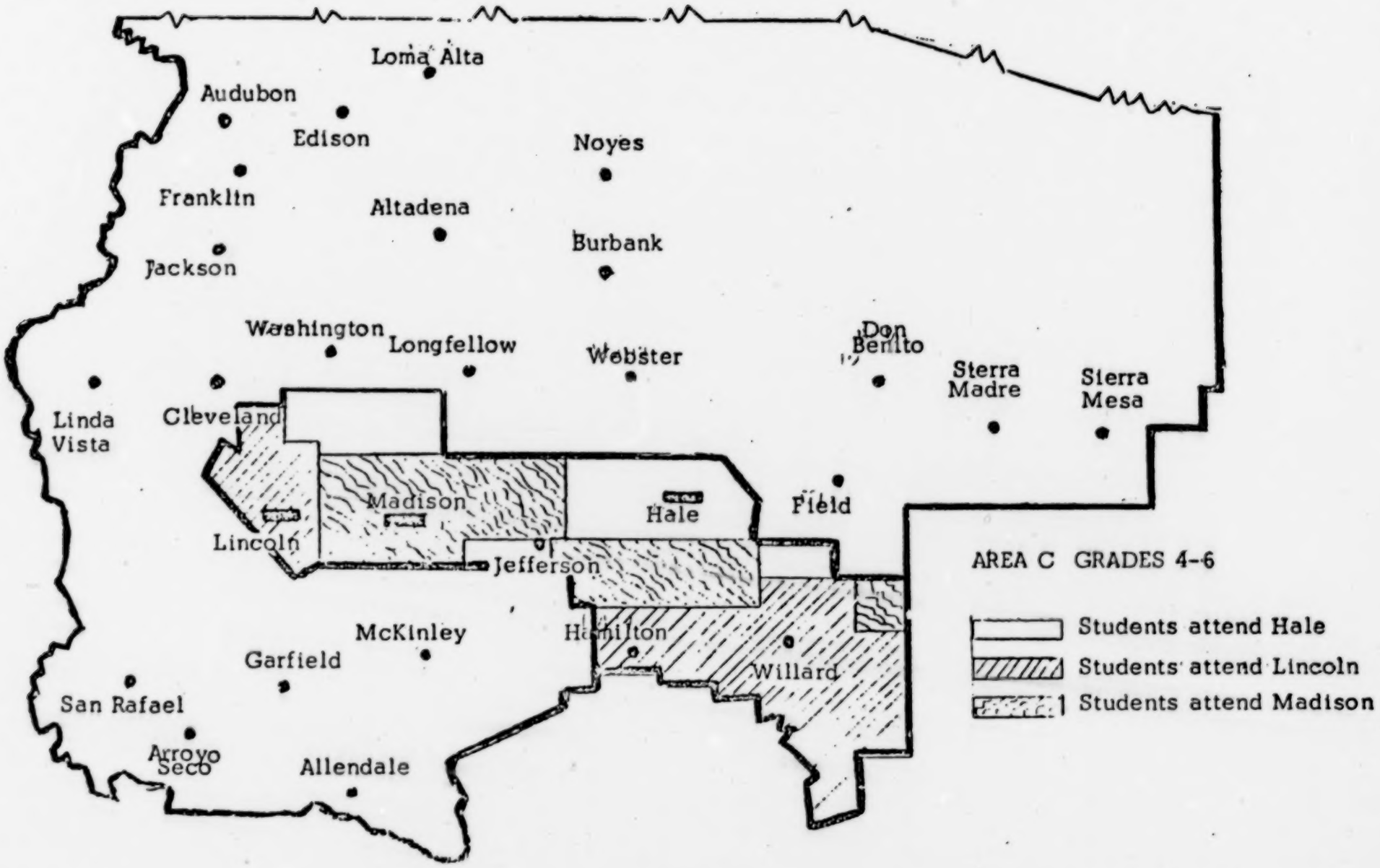
Don Benito
Sierra Madre
Sierra Mesa
Linda Vista
Cleveland
Madison
Hale
Field
Lincoln
Jefferson
AREA C. GRADES K-3
McKinley
Garfield
Hamilton
Willard
San Rafael
Arroyo Seco
Allendale
Students attend Jefferson
Students attend Willard
Students attend Hamilton


Loma Alta
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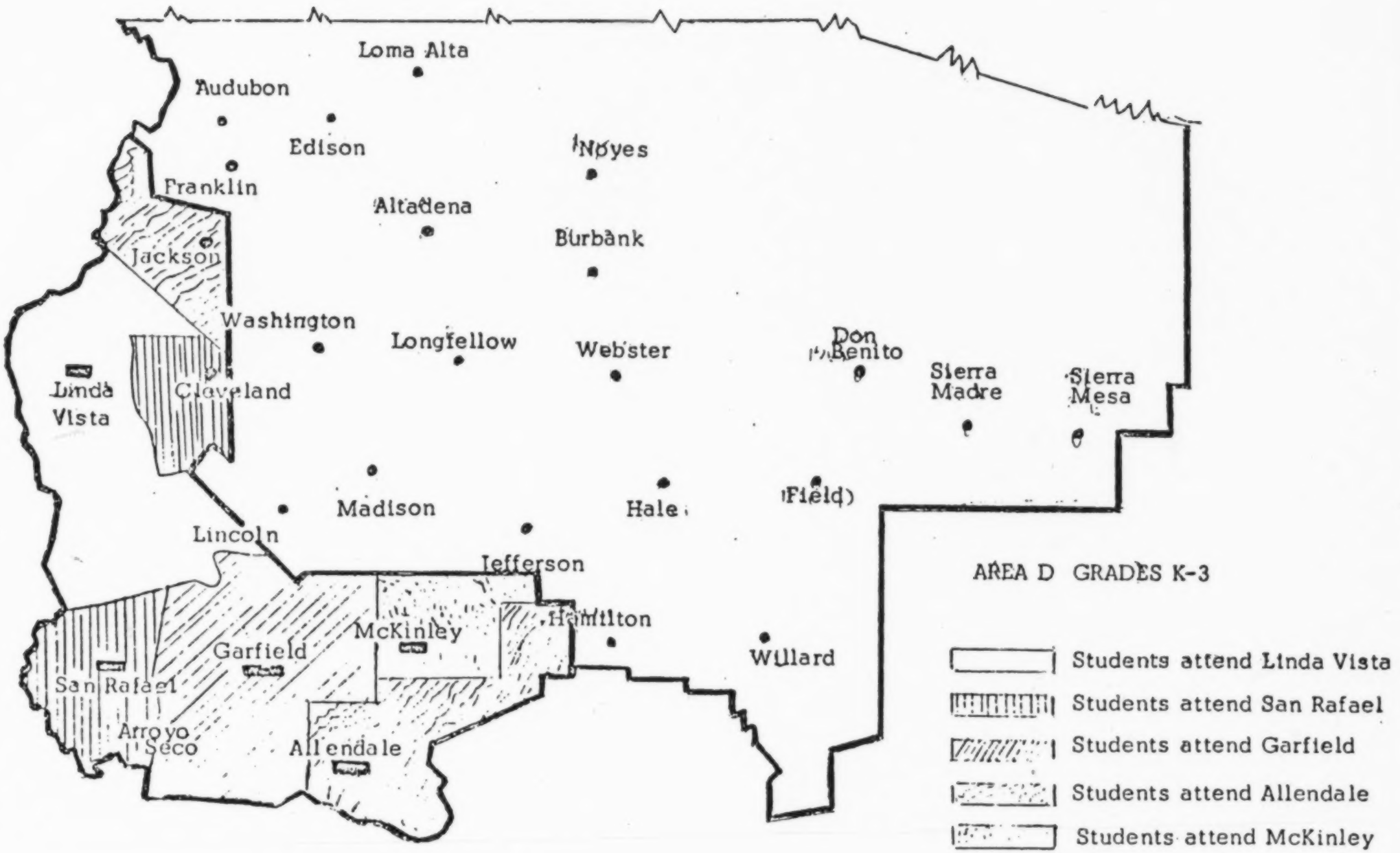
Sierra Mesa
Linda Vista
Cleveland
Madison
Hale
Field
Lincoln
Jefferson
McKinley
Hamilton
Garfield
Willard
San Rafael
Arroyo Seco
Allendale
AREA C GRADES 4-6
Students attend Hale
Students attend Lincoln
Students attend Madison

AREA "D"	Ethnic Distribution (Per cent) 1970-71					Estimated Enrollment 1970-71	1969-70 Fourth School Month Enroll. Gr. 1-6		
	Anglo - Cauc.	Negro	Spanish Sur.	Orient.	Other			Ethnic Distrib. % C&O	% N
Grades Kindergarten - Three									
ALLENDALE - Primary School	47.7	35.7	10.0	5.5	.9	507	432	99	1
ARROYO-GARFIELD-Primary Sch.	43.8	23.5	30.8	.6	1.0	301	356	86	14
LINDA VISTA - Primary School	56.3	33.9	1.8	1.0	.5	174	176	99	1
*McKINLEY - Primary School	54.2	14.9	22.4	5.1	3.2	214	209	88	12
SAN RAFAEL - Primary School	60.4	33.9	2.9	2.6	.0	339	404	99	1
Grades Four - Six									
JACKSON - Upper School	48.6	28.7	16.4	5.0	1.2	734	654	16	84
CLEVELAND - Upper School	59.5	35.8	1.8	2.4	.2	443	513	5	95

*This school property is under consideration for future sale.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Don Benito
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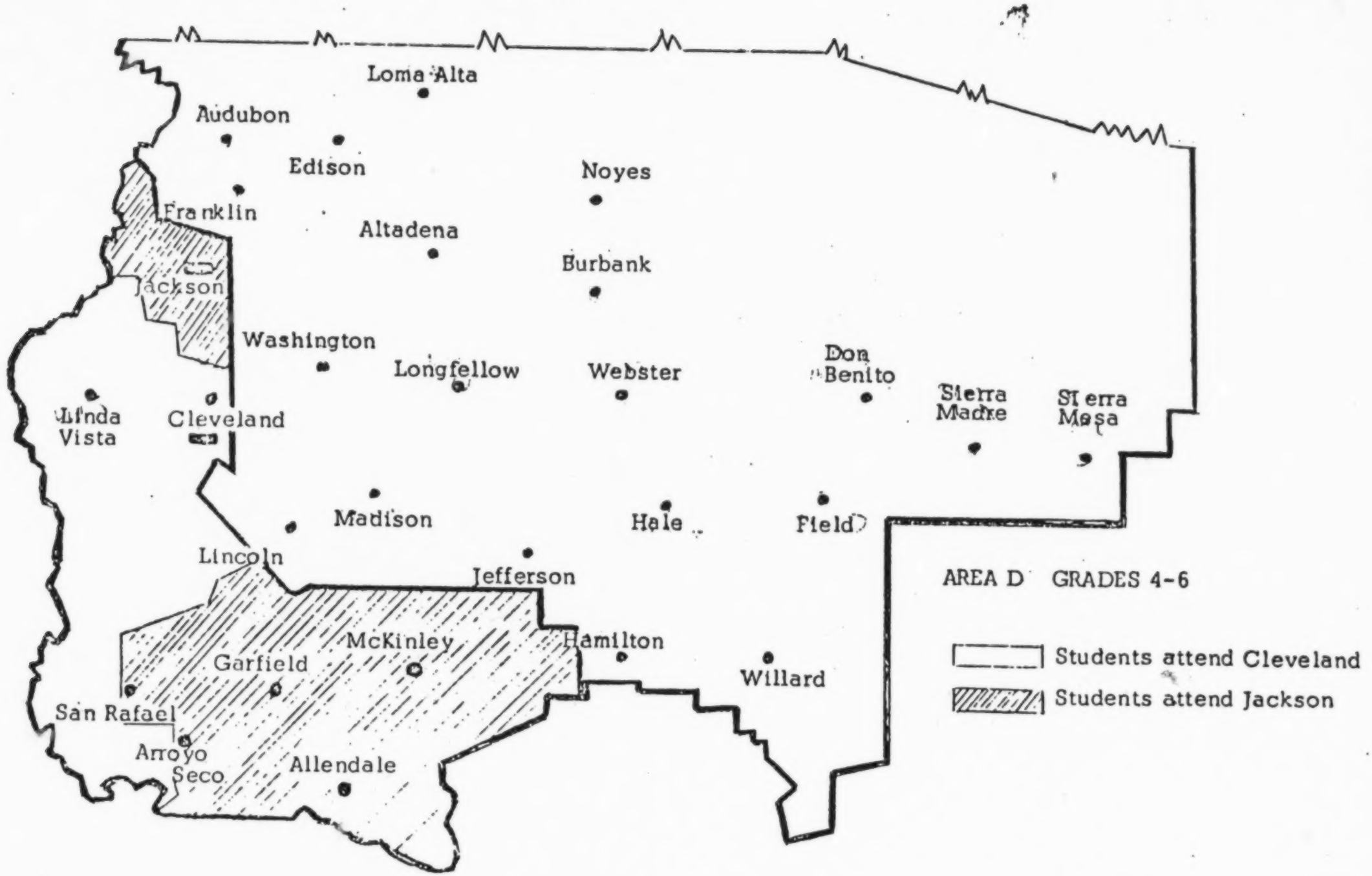
Sierra Mesa
Linda Vista
Cleveland
Madison
Hale
Field)
Lincoln
Jefferson
Hamilton
McKinley
Garfield
Willard
San Rafael
Arroyo Seco
Allendale
AREA D GRADES K-3
Students attend Linda Vista
Students attend San Rafael
Students attend Garfield
Students attend Allendale
Students attend McKinley


Loma Alta
Audubon
Edison
Noyes
Franklin
Altadena
Burbank
Jackson
Washington
Longfellow
Webster
Don Benito
Sierra Madre
Sierra Mesa
Linda Vista
Cleveland
Madison
Hale
Field
Lincoln
Jefferson
McKinley
Hamilton
Garfield
Willard
San Rafael
Arroyo Seco
Allendale
AREA D GRADES 4-6
Students attend Cleveland
Students attend Jackson

Junior High Schools.

Phase I

Implementation of integrated junior high schools will take place in September 1970 as indicated on the enclosed map. Under this plan, the district will include four intermediate schools serving grades 7-8 on the present Eliot, McKinley, Washington, and Wilson campuses, and one school serving the ninth grade at the present Marshall campus. The ninth graders will have the advantages of an expanded elective program utilizing the facilities on both the Marshall and, to a limited degree, the Pasadena High School sites. (PHS is approximately one mile away and a shuttle bus service would facilitate this program).

Phase II

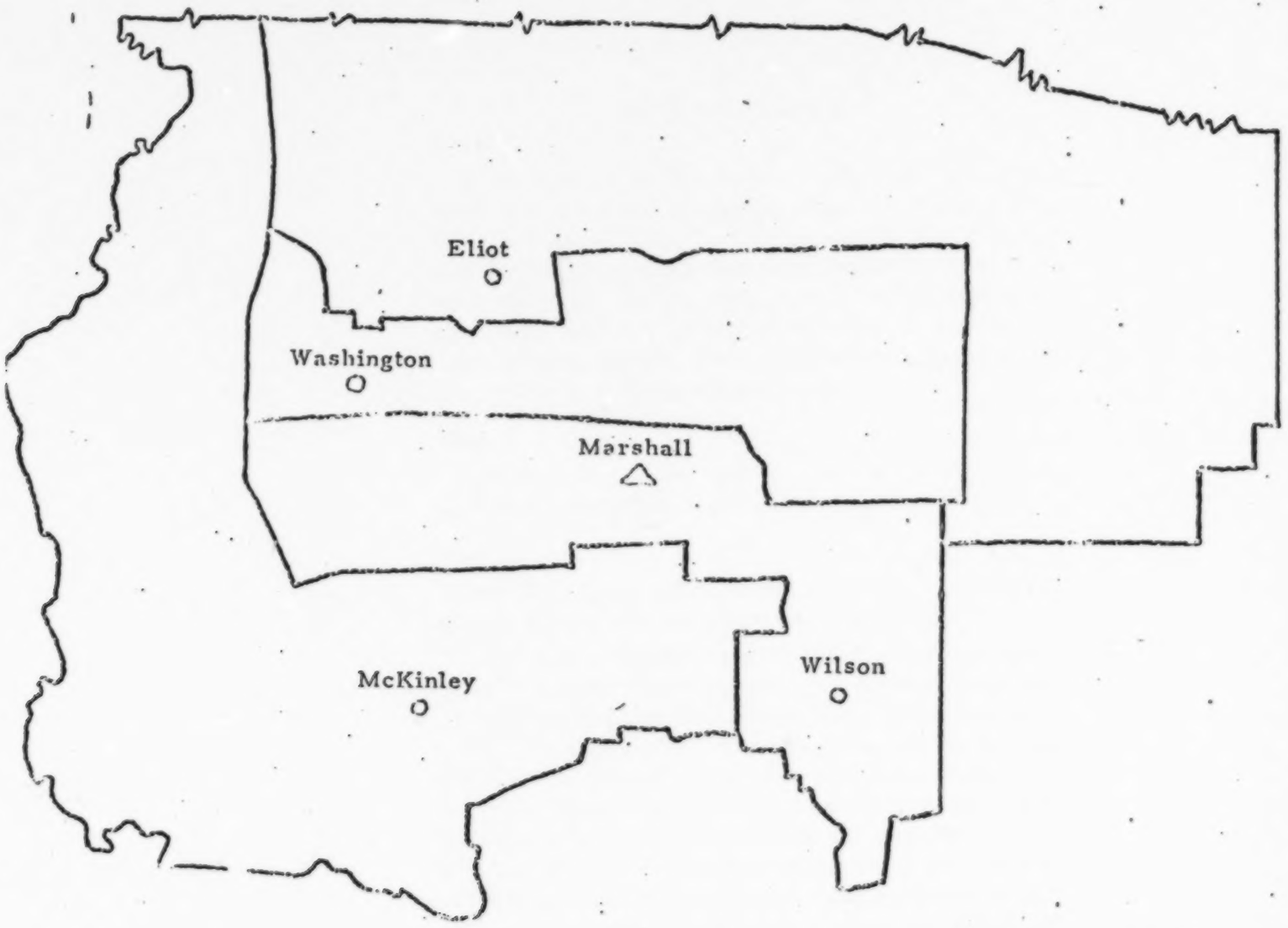
McKinley Junior High School will move to the present Blair site when funds are available through the sale of property to build a new Blair high school at the high school educational park site. Because of the increased student capacity at the Blair site, it would be possible to re-district students numerically to better utilize space in the four junior high schools at this time.

Junior High School boundaries may need to be changed from time to time to continue ethnic balance as established in September 1970.

The Junior High School Estimated Enrollment for 1970 is as follows:

School	Caucasian	%	Negro	%	Other	%	Total
McKinley	661	53.4	356	28.7	222	17.9	1239
Wilson	679	56.0	358	29.6	174	14.4	1211
Eliot	726	58.5	405	32.6	110	8.9	1241
Washington	553	59.8	304	32.9	68	7.3	925
Total	2619	56.7	1423	30.8	574	12.5	4616

9th Grade at Marshall Junior High School=2,276



Junior High Schools, 7th and 8th Grades
9th Grade at Marshall

Senior High Schools.

Phase I

In September 1970, the incoming 10th grade class at each senior high school will be ethnically balanced. The size of the classes will be adjusted to be more comparable than at present, with the idea in mind that each 10th grade class will have the same ethnic and numeric composition when the high school educational park is implemented. New district lines will be drawn to accomplish this. The boundaries will be drawn so that there will be no Open District henceforth.

Phase II

John Muir High School will be moved to the area of PHS as funds are available through the sale of property.

Phase III

Blair High School will be moved to the area north of PHS as funds are available through the sale of property.

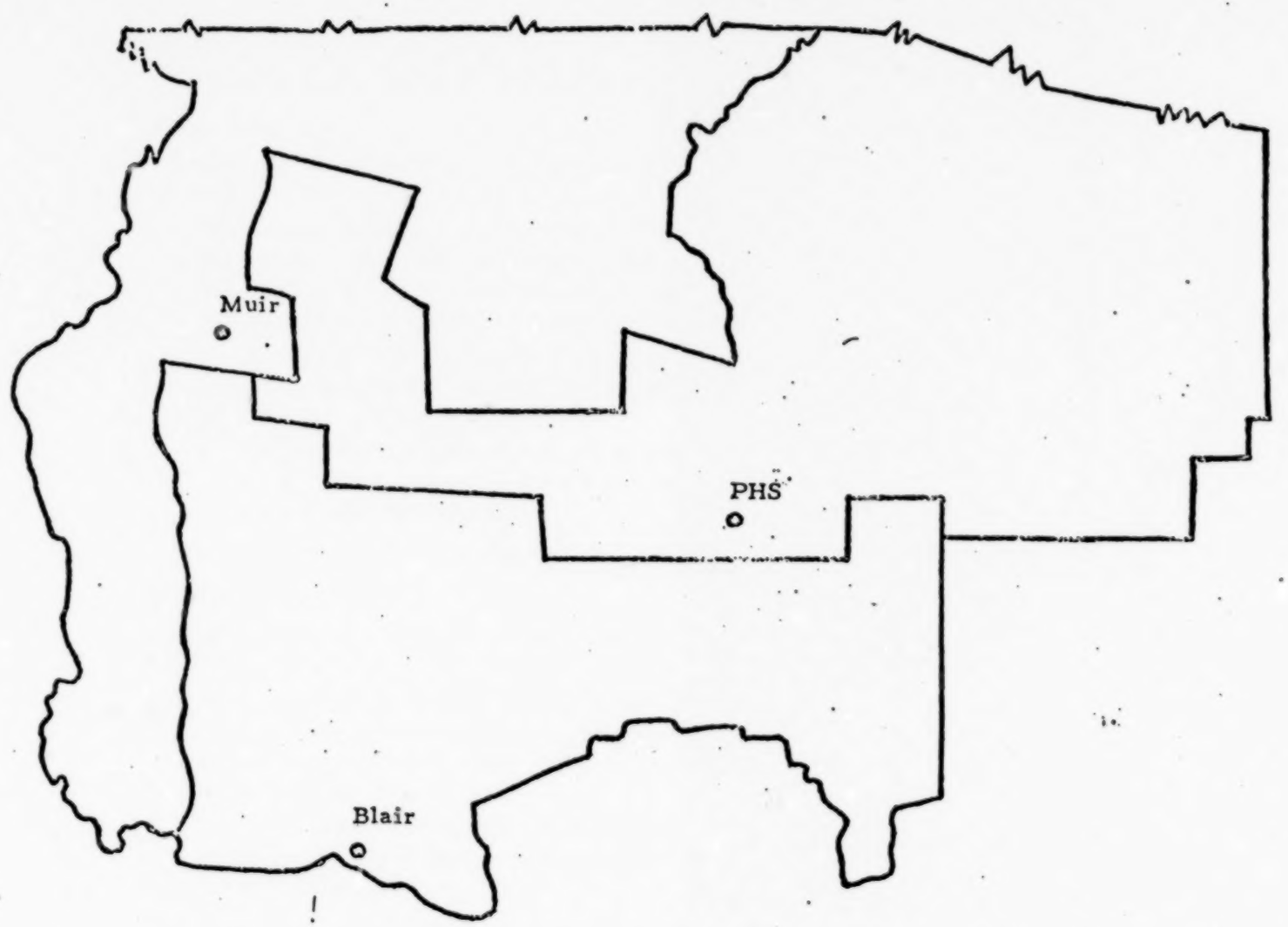
Phases II and III could be implemented at the same time if funds are available. The completed high school educational park in the present Pasadena High School—Victory Park area will be a combination of three individual high schools and the 9th grade school on the Marshall Junior High School site. Students will have equal opportunities on the high school level. Each of the three high schools will be numerically and ethnically balanced. The placement of the three high schools at one site will allow students and staffs to share some facilities and programs while continuing with others independently. Facilities can be developed at the high school educational park for joint use which would be financially impossible to duplicate on various campuses.

Foothill High School

Foothill High School has not been included in these plans because of its unique nature. This is the continuation high school in the Pasadena Unified School District. Students are assigned to this school during the school year when it is seen that they are not making satisfactory adjustment, for various reasons, in their regular school. As a result, there is a continual change in the composition of the student body and a significant fluctuation in the enrollment. Enrollment might increase from 150 to 400 students within a month.

The Senior High School Estimate Enrollment for 1970 is as follows:

School	Caucasian	%	Negro	%	Other	%	Total
Blair-10th	377	57.6	156	23.8	122	18.6	655
11th	276	54.8	139	27.6	89	17.6	504
12th	297	58.7	118	23.3	91	18.0	506
Total	950	57.1	413	24.8	302	18.1	1665
Muir-10th	453	62.5	210	29.0	62	8.5	725
11th	368	47.2	292	37.4	120	15.4	780
12th	319	49.7	229	35.7	94	14.6	642
Total	1140	53.1	731	34.0	276	12.9	2147
PHS 10th	563	61.5	274	29.9	79	8.6	916
11th	822	77.9	162	15.3	72	6.8	1056
12th	971	83.8	128	11.1	59	5.1	1158
Total	2,356	75.3	564	18.0	210	6.7	3130
Total	4,446	64.0	1,708	24.6	788	11.4	6942



Senior High School Zones

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Sibling, Transfer Permit, and Senior Policies.

Sibling Policy

Present policy of the Board of Education provides the following:

> When attendance zones are changed which would require the younger child of a family to attend a different school than the one his older brother/sister attends, then the following choices are available to the family:
>
> 1. The younger child may enroll at the school his older brother/sister attend, or enroll in the school located in his new residence-attendance zone.
> 2. The older brother/sister may remain at his school of last attendance, or enroll in the school located in his new residence-attendance zone.

The above policy shall not be continued.

Transfer Permit Policy

Present policy of the Board of Education provides the following:

> At all grade levels, approval of transfer permit requests are considered in hardship cases involving family circumstances, and/or medical, safety, psychological, or curriculum considerations.
>
> In addition to the above, approval of private child care and children center transfer permit requests shall be considered at the elementary level.

The above policy shall be continued with added emphasis on screening and careful review of each request in order to ascertain that approval is warranted in urgent and valid cases only.

Senior Policy

Present policy of the Board of Education shall be extended as follows:

1. Present kindergarten, 1st and 2nd grade pupils now enrolled at a school under Plan VI or under the Open Transfer Policy, shall be permitted to continue at their school of attendance, providing that this school is established as a primary grade school. However, if the school of their present attendance is changed to an upper grade school, they shall attend the school established as their primary grade school.
2. Present 4th and 5th grade pupils now enrolled at a school under Plan VI or under the Open Transfer Policy, shall be permitted to continue at their school of attendance, providing that this school is established as an upper grade school. However, if the school of their present attendance is changed to a primary school, they shall attend the school established as their upper grade school.
3. Present 10th and 11th grade students now enrolled at a school under the Geographic and Controlled Selected Open District Policy or under the Open Transfer Policy, shall be permitted to continue at their school of attendance.

Plan VI, the Open Transfer Policy, and the Geographic and Controlled selected Open District were instituted in order to improve ethnic distribution of students among the schools of all grade levels. subject to space availability of the individual schools.

CONSTRUCTION.

Rehabilitation and/or Construction of Elementary Schools to Meet Field Act Standards

Schools involved are Burbank, Edison, Jefferson, Linda Vista and Sierra Madre.

Background—Engineering drawings for the possible structural rehabilitation of all five schools are in progress. The District is now considering these alternates:

1. Rehabilitating (making the buildings structurally safe to meet the Field Act standards only).
2. Demolition and replacement with relocatable classrooms.
3. New construction, using the 1967 bond funds allocated, to build new administrative and classroom areas to the extent the allotted funds would allow and to maintain the balance of classrooms required in the relocatable classrooms now on the sites.

Whichever alternative is ultimately chosen, it will have little effect upon the ethnic composition of the elementary schools involved because adjustments in attendance zones will be made, if necessary, to insure that no school has a majority of any minority group.

High School Education Park

Construction for the high school educational park will take part in two phases.

Minimum Costs:	Phase I	$ 9,200,000
	Phase II	3,500,000
		$12,700,000
	Renovation of Washington Jr. High	500,000
		$13,200,000

This total is based upon Davis, MacConnell & Ralston's study of 1968. Added to their costs is a 6% per year inflation factor.

The $12,700,000 construction estimate should be considered the very minimum that would be needed.

In the present estimates for construction and renovation, it should be considered that it would take approximately nine months for planning, another nine months for architects' plans and bidding, and 24 months for construction. The 3½ years should be the very minimum amount, and it should be considered that it may take a time span of 3½ to 7 years to reach the ultimate goal.

Completion of Phase I would provide adequate housing to insure a good educational program. Phase II is necessary to meet the ultimate goal, but is not necessarily vital to the immediate educational program.

Financing required for the educational park would come from two sources. Approximately $1,000,000, which was allocated for Muir rehabilitation from the 1967 bond issue, would become available. Approximately $8,200,000 would be made available through the sale of Muir High School, the Education Center (to be moved to the present Washington Junior High School site), and McKinley Elementary, Washington Junior High School north field, unused site adjacent to Field Elementary, unused site adjacent to Don Benito Elementary, and McKinley Junior High (to be moved to the Blair site). It is estimated that the sales of all properties would be consumated within a minimum of three years, and a maximum of six years. The estimates for the sale of properties is based on present zoning.

Other sources of additional funding for senior high school educational park are being investigated. These include the possible availability of $34,080,000 from the April, 1969 bond

issue, which received greater than a 50% vote but less than the 66⅔% presently required in California. District litigation to declare the bond issue valid on the "one man one vote" premise will be heard by the State Supreme Court soon. Possi-

bilities of lease-sale arrangements and joint-powers agreements are also being investigated.

RELOCATABLES.

Elementary

Space Utilization

Complete implementation of the area plan will result in the reallocation of 42 permanent classrooms and 28 relocatable classrooms. It will be necessary to move 19 relocatable classrooms to other sites to accommodate adjusted enrollments under the area plan. The remaining classrooms will be used to accommodate classes for Special Education, Opportunity and ESEA programs. Attached is a detailed breakdown of the classroom requirements at various schools.

Time Frame

The moving of the relocatables would have to take place between the end of this school term and the beginning of the fall term. This is an ambitious effort to complete, but it is felt that between now and June 15 it is possible to hire an architect, get State approval and receive bids for relocatables, as well as get board approval. All that would be left would be the actual physical movements of the relocatables. Also, preliminary electrical work can be done and foundations poured between now and the end of school. These classrooms, of course, would not be available for the summer school program.

Costs

Move 19 relocatables at $2,750 each = $52,250

Architect Fees	$ 150
OAC Fees	50
Physical Moving	1,100
Foundations	800
Utilities	650
	$2,750

CLASSROOM ADJUSTMENTS

AREA "A"

BASE SCHOOL	Est. Enrollment	Rooms Available Present		Rooms Needed	Adjustment	Unassigned Rooms Available after Adjustment		Number Relocatables to be Moved onto Site
		Permanent	Relocatables			Permanent	Relocatables	
K-3								
Audubon	704	15	4	21	+2			2
Noyes	429	11		13	+2			2
Sierra Madre	650	4	16	20	0			
Sierra Mesa	565	16		18	+2			2
4 - 6								
Altadena	722	27		24	-3	3		
Edison	568	5	15	20	0			
Loma Alta	633	18	2	21	+1			1
TOTALS						3	0	7

CLASSROOM ADJUSTMENTS

AREA B

Base School	Estimated Enrollment	Rooms Available Present		Rooms Needed	Adjustment	Unassigned Rooms Available after Adjustment		Number Relocatables to be Moved onto site
		Permanent	Relocatable			Permanent	Relocatable	
K - 3								
Burbank	618	9	8	18	+1			1
Don Benito	741	24		22	-2	2		
Franklin	700	15	6	21	0			
Webster	792	22		25	+3			3
4 - 6								
Field	664	22		24	+2			2
Longfellow	794	27	3	27	-3		3	
Washington	681	30	8	24	-14	6	8	
Totals						8	11	6

CLASSROOM ADJUSTMENT

Area "C"

BASE SCHOOL	Est. Enrollment	Rooms Available Present		Rooms Needed	Adjustment	Unassigned Room Available after Adjustment		Number Relocatables to be Moved onto Site
		Permanent	Relocatables			Permanent	Relocatables	
K-3								
Hamilton	846	18	2	25	+5			5
Jefferson	769	10	17	24	-3		3	
Willard	891	30	1	28	-3	2	1	
4-6								
Hale	480	20	3	17	-6	3	3	
Lincoln	663	34		23	-11	11		
Madison	557	19	10	20			9	
TOTALS						16	16	5

CLASSROOM ADJUSTMENTS

AREA "D"

Base School	Estimated Enrollment	Rooms Available Present		Rooms Needed	Adjustment	Unassigned Rooms Available After Adjustment		Number Relocatables to be Moved onto Site
						Permanent	Relocatable	
K - 3								
Allendale	507	14	3	16	-1		1	
Arroyo-Garfield	301	13		10	-3	3		
Linda Vista	174	1	4	6	+1			1
Kinley	214	9		7	-2	2		
San Rafael	339	16		11	-5	5		
4 - 6								
Cleveland	443	20		15	-5	5		
Jackson	734	19	6	25	0			
Totals						15	1	1

Relocatables

Secondary

Space Utilization

It is assumed that eight classrooms will be needed at Marshall Junior High School. These will be available as follows:

School	Relocatables Available	No. to be Moved to Marshall
Washington Jr. High	2	2
Eliot	2-4	2
Wilson	2	0
Pasadena High School	2-6	4
Total to be Moved		8

Time Frame

It is expected that these relocatables could be moved during the summer of 1970.

Costs

It is assumed that the average cost to move a relocatable classroom will be $2,750. Therefore, the cost of moving eight relocatables will be $22,000.

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TRANSPORTATION.

Cost Estimates

The estimated expense to transport pupils is based on the following assumptions:

1. That all pupils attending schools outside their normal areas will ride the bus.
2. That there would be three runs each per bus, a.m., and p.m. for elementary pupils; and two runs each per bus, a.m. and p.m. for secondary pupils.

3. That the expense is based on the present contract cost per bus.
4. That starting times are staggered.

	Total Cost	Estimated* State Re-imbursement	Net Cost
Elementary Area Plan	$ 485,000	$120,000	$365,000
Jr. High 9th Grade Plan	325,000	75,000	250,000
Sr. High Plan III	220,000	15,000	205,000
	$1,030,000	$210,000	$820,000

*Does not include possible federal funding.

Since the district has limited budget which is needed to continue a strong educational program, the district is investigating various outside sources of funding for the transportation necessary to implement this program, and has in mind the assurances given repeatedly in Federal Court by Attorney Charles Qaintance of the U. S. Justice Department, that funds would be made available to provide for transportation costs to implement a desegregation plan.

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Additional facts based on previous assumptions:

50% of elementary pupils to be transported (approximately 8000 students)

52% of junior high pupils to be transported (approximately 3600 students)

27% of senior high pupils to be transported (approximately 1900 students)

Requires 106 buses at a cost of $5,800 per day.

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Part II.

Plan for Assignment, Hiring, and Promotion of Teachers and Administrators

Elementary School Teacher Assignment.

There are twenty-seven elementary schools with approximately 650 teachers. The annual turnover of teachers due to resignation and retirement averages 15% resulting in approximately 100 elementary school teacher vacancies to be filled each year.

In the interest of retaining high standards of employment and in considering the shortage of minority teachers available, the plan proposes to reduce the racial segregation throughout the elementary schools as follows.

By September 1970 each elementary school will have assigned no fewer than 15% and no more than 45% minority teachers and no fewer than 2 minority teachers in any one school except where the total number of teachers is less than 8 in which case there will be at least 1 minority teacher.

By the opening of school in September 1970 we will have increased the number of minority group teachers significantly. Each year thereafter, a a recruiting program will be so planned as to increase the number of each minority to more closely approximate the racial composition of the student population.

The recruitment program as outlined elsewhere is directed toward an active recruitment of minority groups including Negroes, Spanish-Americans, and Orientals.

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Junior High School Teacher Assignment.

There are five junior high schools with approximately 295 teachers. The annual turnover of teachers due to resignation and retirement averages 15% resulting in approximately 44

junior high school teacher vacancies to be filled each year. In addition to this number, in September 1970 thirteen teachers presently assigned to the junior high schools who were transferred September 1969 because of the senior high school reduction from six to five periods, will be returned to the senior high school resulting in a total of approximately 57 vacancies at the junior high school level.

In the interest of retaining high standards of employment and in considering the shortage of minority teachers (which is even more acute at the secondary level than at the elementary level) the plan proposes to reduce the racial segregation throughout the junior high schools as follows.

By September 1970 each junior high school will have assigned no fewer than 15% and no more than 45% minority teachers.

By the opening of school in September 1970 we will have increased the number of minority group teachers significantly. Each year thereafter, a recruiting program will be so planned as to increase the number of each minority to more closely approximate the racial composition of the student population.

The recruitment program as outlined in another part of this plan is directed toward an active recruitment of minority groups including Negroes, Spanish-Americans, and Orientals.

Senior High School Teacher Assignment.

There are three senior high schools with approximately 263 teachers. With the restoration of the six period day the number of teachers at the senior high school level will be increased to approximately 307. The annual turnover of teachers due to resignation and retirement averages 15% resulting in approximately 39 senior high school teacher vacancies to be filled each year. In September 1970 forty-four (44) additional teachers will be required to restore the six period day for all students resulting in 83 teacher vacancies at the senior high school level.

Thirteen of these vacancies will be filled by junior high school teachers returning to their positions in the senior high schools resulting in a total of approximately 70 vacancies at the senior high school level.

In the interest of retaining high standards of employment and in considering the shortage of minority teachers (which is even more acute at the secondary level than at the elementary level) the plan proposes to reduce the racial segregation throughout the senior high schools as follows.

By September 1970 each senior high school will have assigned no fewer than 15% and no more than 45% minority teachers.

By the opening of school in September 1970 we will have increased the number of minority group teachers sufficiently to meet the goals named above. Each year thereafter, a recruiting program will be so planned as to increase the number of each minority to more closely approximate the racial composition of the student population.

The recruitment program as outlined in another part of this plan is directed toward an active recruitment of minority groups including Negroes, Spanish-Americans, and Orientals.

Recruitment.

It is estimated that the Pasadena Unified School District will have 100 teacher vacancies at the elementary school level and 130 vacancies at the secondary level which must be filled before the opening of school in September 1970.

In planning the recruitment program we have selected interviewing locations where minority group candidates would be available. Assistance was requested from the district Office of Intergroup Education and the State Department of Intergroup Relations. The California State Department of Education publication entitled "Recruiting Minority Teachers" was used gen-

erously for reference. Conferences were held with experts in the field of teacher recruitment. The Los Angeles County Office, college and university placement offices, teacher association offices (both California Teachers Association and the American Federation of Teachers), and Association of Mexican American Educators were contacted.

There are four phases to the program.

I. Local recruitment will include

A. An organized program of teacher referrals by minority employees of the school district. Members of this group will contact minority persons with teaching credentials who live in the Pasadena area who may wish to apply for positions in Pasadena.

B. Inquiries by telephone and by letter from teachers who wish to apply will be answered and interviews will be scheduled.

C. An advisory committee composed of recently hired minority personnel will be formed to help recruit teachers who might be interested in a

position with the Pasadena Unified School District. Members of this committee will write individual letters to their former colleges and acquaintances telling of their experiences in Pasadena concerning living conditions, climate, employment opportunities and the educational program. Through these contacts minority educators will be encouraged to apply for teaching and administrative positions in the Pasadena Unified School District.

II. Southern California recruitment will include

A. College and University placement offices. Appointments have been made for recruitment teams to visit the following college and university placement offices.

California State College at Los Angeles
California State College at Long Beach
California State College at Fullerton
California State College at San Bernardino
San Fernando Valley State College
California State Polytechnic College at Pomona
University of California at Los Angeles
University of California at Irvine
University of California at Riverside
University of Redlands
University of Southern California
Pepperdine College
San Diego State College
California Western University

III. Out-of-area recruitment will include college and university placement offices outside of Southern California. Appointments have been planned for recruitment teams to visit the following placement offices.

University of California, Santa Barbara
Fresno State College
University of California, Berkeley
University of San Francisco
San Francisco State College
Stanford University

San Jose State College
California State College, Hayward
Sacramento State College
College of the Pacific
Northern Arizona State, Flagstaff, Arizona
Arizona State College, Tempe, Arizona

University of Arizona, Tucson, Arizona
New Mexico State, Las Cruces, N. M.
University of New Mexico, Albuquerque, N. M.
Adams State College, Alamoso, Colorado
University of Denver, Denver, Colorado
Loretta Heights College, Denver, Colorado
University of Colorado, Boulder, Colorado
Colorado State College, Greeley, Colorado
Colorado Sate University, Fort Collins, Colorado
North Texas State, Denton, Texas
University of Houston, Houston, Texas
Texas Southern, Houston, Texas
Louisiana State, Baton Rouge, Louisiana
Dillard, New Orleans, Louisiana
Xavier College, New Orleans, Louisiana
Tulane University, New Orleans, Louisiana
Grambling College, Grambling, Louisiana

IV. A recruitment letter outlining the teacher needs in Pasadena for September 1970 will be sent to college and university placement offices thoughout the Mid-west and East and to candidates from whom letters of inquiry are received in the Personnel Department. Advertisements will be placed in large city newspapers. Recruitment centers will be established in Chicago, Illinois; Detroit, Michigan; Pittsburgh, Pennsylvania; and Columbus, Ohio. The establishment of additional centers will be governed by the response to the advertising program.

Placement offices and recruitment centers will be visited by recruitment teams under the administration of the Personnel Department. School personnel, both teachers and administrators, will serve as members of interviewing teams. Membership will include representatives of varied ethnic and racial groups.

Inservice training sessions will be held by the Personnel Department. During these sessions team members will be instructed in interviewing techniques and evaluation procedures. In the inservice training sessions and in advertising materials distributed both locally and nationally, the need for additional minority teachers will be stressed.

Teacher Selection.

This program of selection has been planned with a concern for the educational welfare of the students. Although it is committed to the hiring and promotion of minority groups, there is an equal commitment to the maintaining of high standards of competence among all those who are employed. Anything less than this commitment would result in irreparable damage to the educational program of present and future generations of students.

The decision to employ a teacher should be a committee decision (at the district and/or school level) and not the sole responsibility of an administrator, a consultant, or the Director of Personnel. The committee members will interview candidates, review applications, college transcripts, references, and other materials submitted by the applicants.

The Personnel Department will refer candidates to individual schools where vacancies occur. The administrator in charge of the school will be requested to make a selection from no more than five such referrals.

When a majority of the committee members find a candidate unacceptable, notice will be sent to the candidate. Written documentation must be made and kept as a part of the Personnel Department files.

In referring teachers to schools, the Personnel Department will be responsible for maintaining the 15%-45% range of

ethnic balance within the school district. Care will also be given to maintaining a balance of new and experienced teachers in each school.

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Recruitment and Selection of Administrators.

There are 57 non-teaching certicated assignments in the Education Center.

There are 76 non-teaching assignments located in the schools.

This total of 133 non-teaching certificated assignment includes all school administrators, directors, supervisors, consultants, counselors, school psychologists, and others who have regular assignments outside the classroom. Of the 133 such assignments 27 are held by minority personnel, 18 of which are Negro.

Vacancies in these positions are filled from eligible lists established by examination. At the present time the examination consists of an oral interview, evaluation of training and evaluation of experience by a committee appointed for this purpose. Every such committee this past year has had at least one minority group representative. Announcements for these positions are distributed to all school personnel, to college and university placement offices in Southern California and to a mailing list recommended by the Department of Intergroup Education which includes agencies and districts where minority personnel may be available. The announcement contains the title of the position, the minimum requirements for entrance, desirable qualifications, job duty statement, and the salary. All applicants who meet the minimum entrance requirements are admitted to the examination. Applicants who do not meet minimum entrance requirements are so informed by the Personnel Department.

When vacancies occur, the top five names on the eligible list are referred to the appointing authority for consideration. All appointments must be approved by the Superintendent.

A positive recruitment program paralleling the teacher recruitment program will actively seek out minority group administrators, supervisors, and counselors who are interested in employment with the Pasadena Unified School District. As a

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part of this recruitment program, bulletins concerning job opportunities will be sent to college and university placement offices and other professional organization offices. In these bulletins, minority candidates will be especially encouraged to apply.

Appeal Procedure.

Candidates who are unsuccessful in their application for administrative and other non-teaching certificated positions will have the right of appeal. Requests for review should be addressed to the Administrative Director for Personnel and appointments will be scheduled before the Review Board hereafter described.

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Review Procedure.

It is hoped that any candidate who has been unsuccessful in his application for an administrative position in the Pasadena Unified School District would feel free to discuss the results of his evaluation with the Administrative Director for Personnel. However, there are occasions when the candidate wishes to go beyond the Personnel Department and present his case to a higher authority.

In order to provide this opportunity to candidates for promotional positions, it is proposed that a special Review Board be established. This Board will consist of:

One member appointed by the Negotiating Council representing the elementary division

One member appointed by the Negotiating Council representing the secondary division

One member appointed by the Assistant Superintendent for Elementary Education

One member appointed by the Assistant Superintendent for Secondary Education

One member appointed by the Department of Intergroup Education.

This Board will have a revolving membership so that at all times at least two members of the committee are experienced. At least two meetings of the Board will be held each semester.

Any applicant who has applied for a promotional position in the Pasadena Unified School District and who has not been approved in the examination or by the evaluating committee will have the right to appeal this decision. This appeal must be in writing and addressed to the Director of Personnel who in turn will arrange for an appointment for the candidate at the next meeting of the Review Board. The Board will review the application and all other materials submitted by the candidate at time of application and will offer the opportunity for the candidate to appear before the Board in person.

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Assignment of Substitutes.

Competent substitutes are in critical shortage. They are hard to find and hard to keep. Because of the very nature of the job, many competent teachers prefer regular or long term assignments. Replenishing the supply of substitutes is a daily necessity. The Personnel Department urges substitute teachers to make themselves available for all assignments.

In order to make certain that minority substitutes receive equal consideration, all substitute cards have been identified as to race and the substitute clerks have been instructed that sub-

stitutes will be assigned to positions regardless of the racial composition of the school.

Recruitment of additional substitutes is difficult at best. Recently a change in policy was adopted which permitted teachers on leave to serve as day-to-day substitutes. Requests are being made to local chapters of the PTA for former teachers now housewives to make themselves available for substitute service.

Within the shortage of substitutes, maintaining a reasonable standard of quality is difficult. In an effort to make certain that unqualified teachers are not retained, principals are requested to make regular reports on substitutes' services and those who prove unsatisfactory will be terminated.

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DEFENDANTS' SUBMISSION OF AMENDMENT TO PLAN.

Filed 2 March 1970.

Defendants herewith submit their amendment and modification to the Plan for Integration dated February 18, 1970 and heretofore submitted under date of February 18, 1970. Said amendment and modification is attached hereto as Exhibit "A".

Dated: March 2, 1970.

POLLOCK, PALMER & METZLER,
JOHN P. POLLOCK,
JOHN ANDREW MILLER,
By /s/ JOHN P. POLLOCK,
John P. Pollock,
Attorneys for Defendants.

PLAN FOR THE INTEGRATION

OF THE

PASADENA UNIFIED SCHOOL DISTRICT

SUPPLEMENT NUMBER I

Pasadena Unified School District
Pasadena, California
February 27, 1970

PREFACE.

The Division of Elementary Education staff has reviewed the "Plans for Integration of the Pasadena Unified School District" as submitted to Judge Manuel Real, and found that further refinements should be made in areas that would:

- Reduce islands in attendance areas
- Achieve better contiguous attendance areas
- Achieve better proximity to school facilities
- Reduce the costs in implementing the plan by reducing the number of relocatables needed
- Correct clerical errors which affected ethnic count in Area "A"

Pasadena Unified School District
Division of Elementary Education
Pasadena, California

INTER-AREA CHANGES

Area A to B

Changes	Justification
Zone 7 Blocks 5 (Change I) From: Area A Schools: Primary Audubon Upper Loma Alta To: Area B Schools: Primary Franklin Upper Field	This will make it possible for students to attend primary school across the street from their homes.*
Zone 18 Blocks 8, 9, 10, 11, 12 (Change II) From: Area A Schools: Primary Audubon Upper Altadena To: Area B Schools: Primary Burbank Upper Washington	This change was made to off-set the slight inbalance created by the area change listed above.*
Zone ..... Blocks ..... From: Area ..... Schools: Primary ..... Upper ..... To: Area ..... Schools: Primary ..... Upper	* If a change is made between areas, it is necessary to change both primary and upper grade schools.
Zone ..... Blocks ..... From: Area ..... Schools: Primary ..... Upper ..... To: Area ..... Schools: Primary ..... Upper	

Pasadena Unified School District
Division of Elementary Education
Pasadena, California

INTER-AREA CHANGES

Area "B to C"

Changes	Justification
Zone 69 (Change III) Blocks 20, 21, 22, 23, 24, 25, 26, 27, 28 From: Area B Schools: Primary Burbank Upper Field To: Area C Schools: Primary Willard Upper Lincoln	To make the freeway a natural boundary to the North for the primary school and provides a contiguous attendance area for the upper grade Lincoln School.
Zone ..... Blocks ..... From: Area ..... Schools: Primary ..... Upper ..... To: Area ..... Schools: Primary ..... Upper	
Zone ..... Blocks ..... From: Area ..... Schools: Primary ..... Upper ..... To: Area ..... Schools: Primary ..... Upper	
Zone ..... Blocks ..... From: Area ..... Schools: Primary ..... Upper ..... To: Area ..... Schools: Primary ..... Upper	

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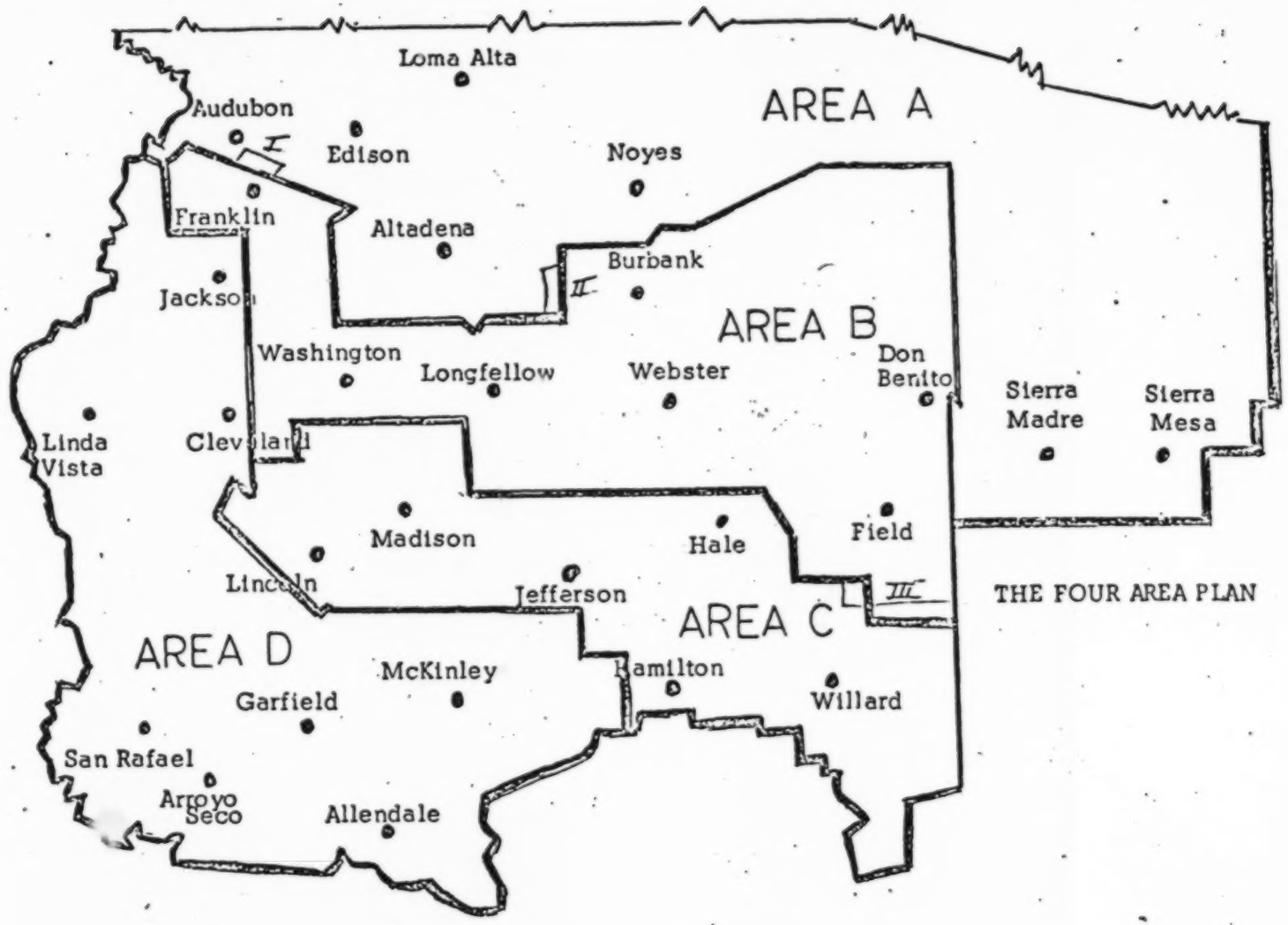

THE FOUR AREA PLAN

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Pasadena Unified School District
Division of Elementary Education
Pasadena, California

Area "A"

INTRA-AREA CHANGES

Changes	Justification
Zone 11 Change I Blocks All From: Schools: Primary _____ Upper Edison To: Schools: Primary _____ Upper Altadena	Geographically the area is in close proximity to Altadena School, and the ethnic balance will be maintained.
Zone 6 Change II Blocks 4, 5, 6, 8, 17, 18, 19, 20, 21, 22, 23, 24, 25 From: Schools: Primary Sierra Madre Upper _____ To: Schools: Primary Noves Upper _____	The present main building at Sierra Madre is closed due to rehabilitation and 16 relocatables presently occupy playground space for the K-6 present enrollment of approximately 550. This change will not necessitate the additional relocatable classroom at Sierra Madre.
Zone 48 Change III Blocks 9, 10, 11, 15, 19 From: Schools: Primary Sierra Madre Upper _____ To: Schools: Primary Sierra Mesa Upper _____	Because of clerical coding error, the ethnic balance was reported incorrectly. This change is to correct the error.

Zone .....
Blocks .....

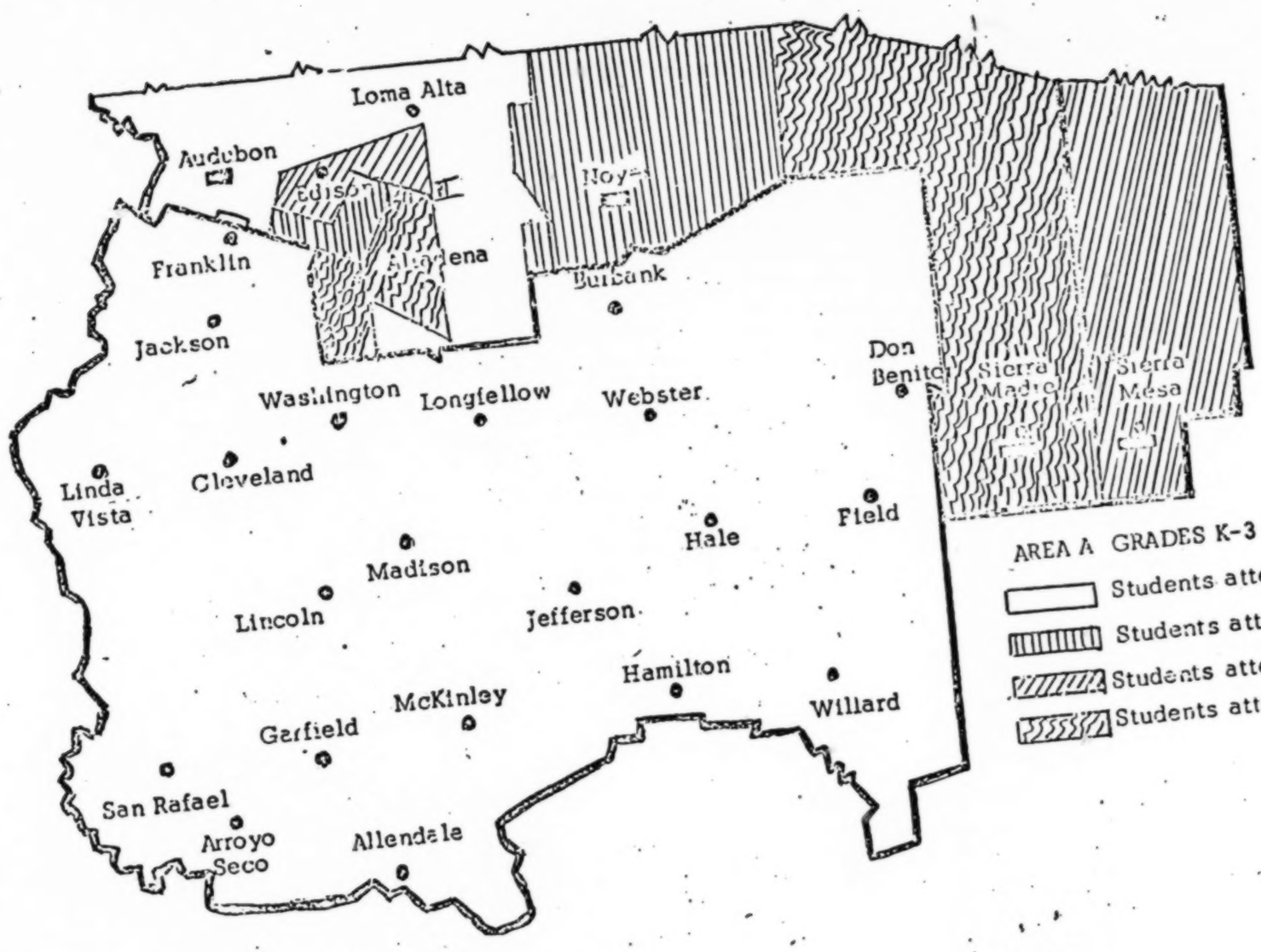
From: Schools: Primary .....
Upper .....

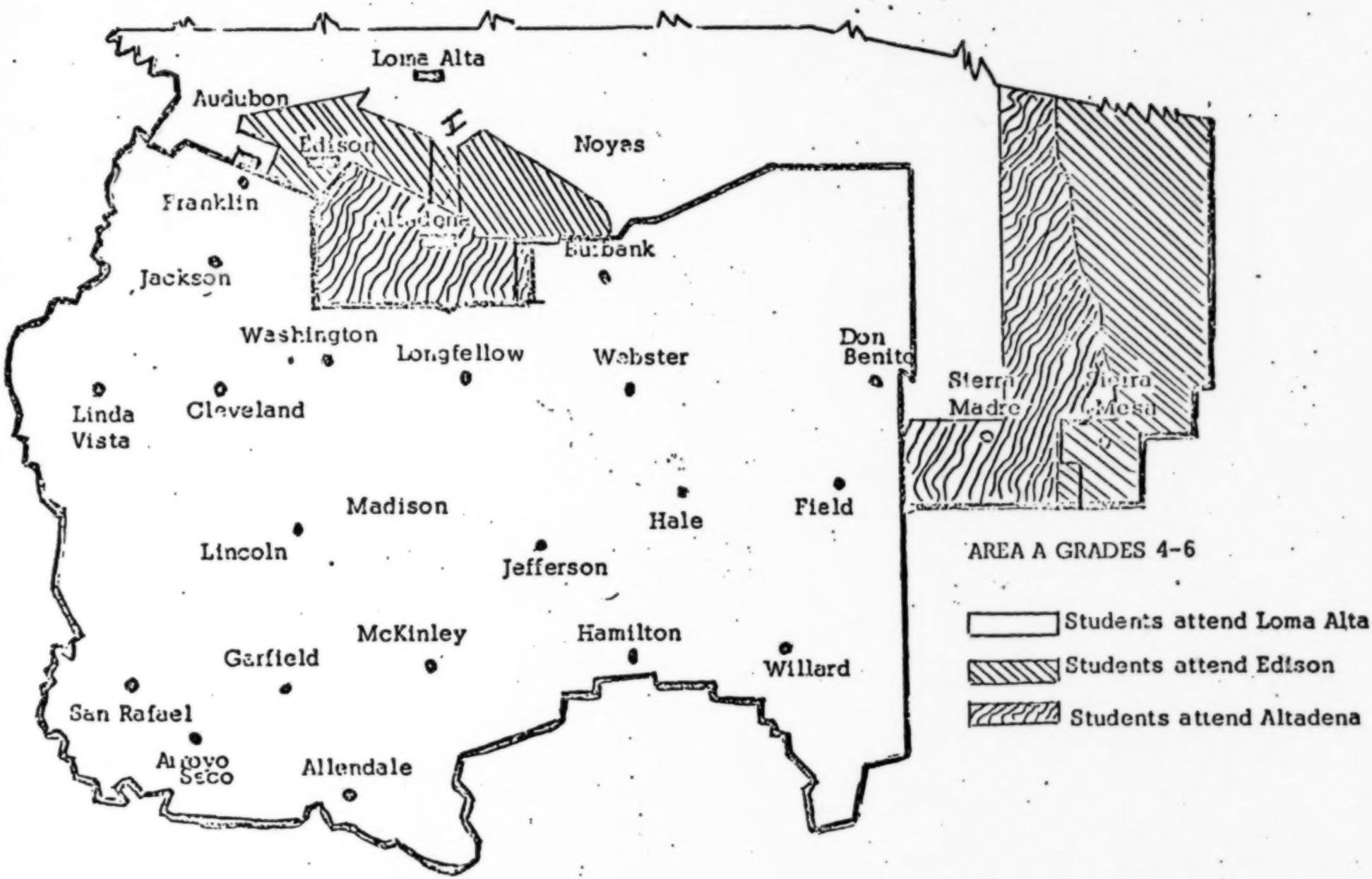
To: Schools: Primary .....
Upper .....

Zone .....
Blocks .....

From: Schools: Primary .....
Upper .....

To: Schools: Primary .....
Upper .....




Loma Alta
Audubon
Edison
Noyes
Franklin
Altadena
Burbank
Jackson
Washington
Longfellow
Webster
Don Benito
Sierra Madre
Sierra Mesa
Linda Vista
Cleveland
Madison
Hale
Field
Lincoln
Jefferson
McKinley
Hamilton
Garfield
Willard
San Rafael
Arroyo Seco
Allendale
AREA A GRADES 4-6
Students attend Loma Alta
Students attend Edison
Students attend Altadena

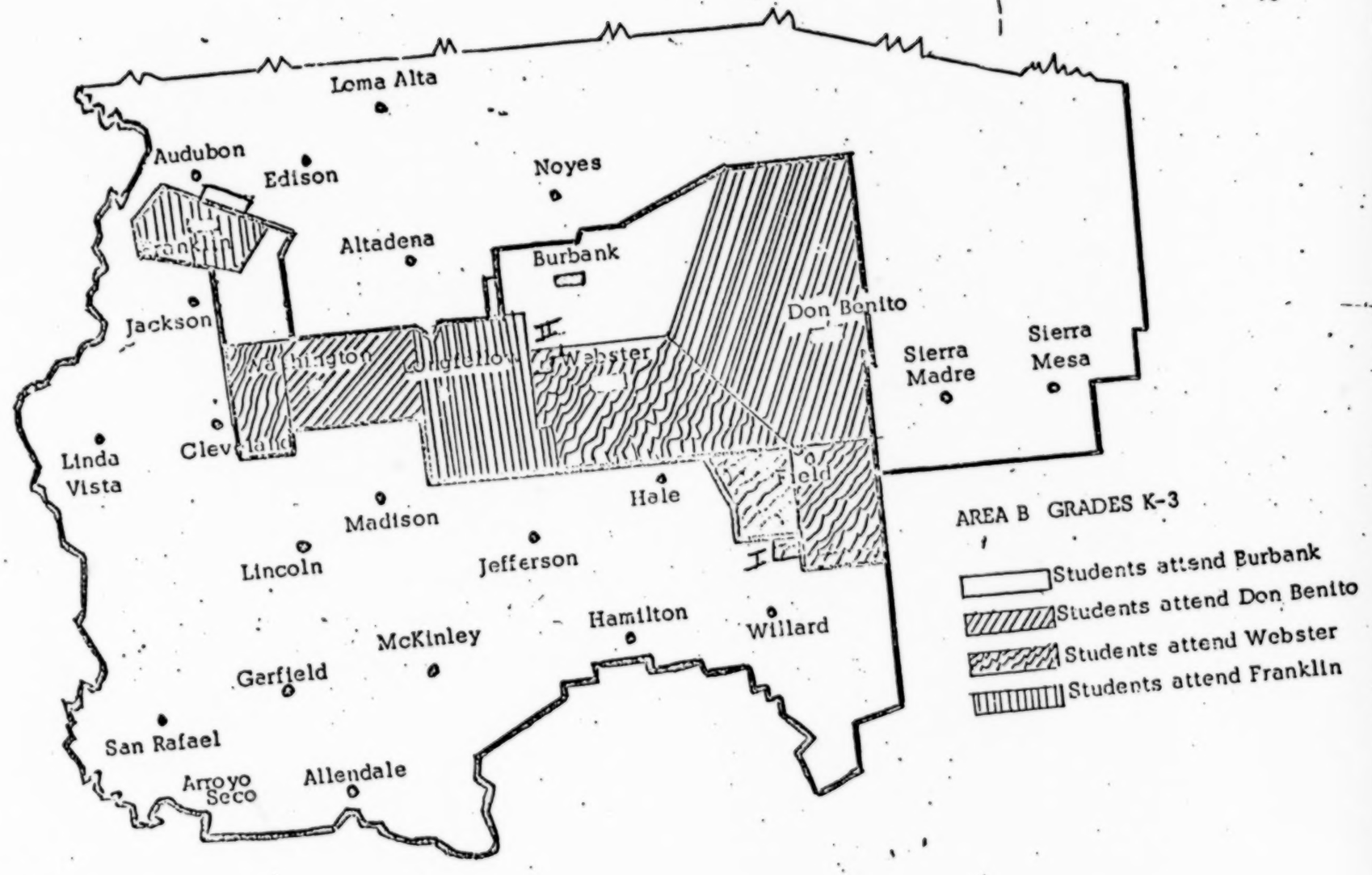
AREA "A"	Ethnic Distribution (Per cent) 1970-71					Estimated Enrollment 1970-71	1969-70 Fourth School Month Enroll. Gr. 1-6		
	Anglo-Cauc.	Negro	Spanish Sur.	Orient.	Other			Ethnic Distrib. % C&O	% N
Grades Kindergarten - Three									
AUDUBON - Primary School	53.1	38.6	4.4	2.8	1.1	655	584	34	66
NOYES - Primary School	57.6	34.1	5.2	2.3	.8	481	315	99	1
SIERRA MADRE - Primary School	55.2	36.0	5.5	2.4	.9	641	543	100	0
SIERRA MESA - Primary School	56.7	34.4	5.5	2.6	.8	582	438	100	0
Grades Four - Six									
ALTADENA - Upper Grade School	55.9	30.7	9.6	2.4	1.4	730	834	71	29
EDISON - Upper Grade School	55.9	35.4	4.6	2.8	1.3	539	631	39	61
LOMA ALTA - Upper Grade School	57.2	37.1	3.8	1.7	.2	601	554	75	25

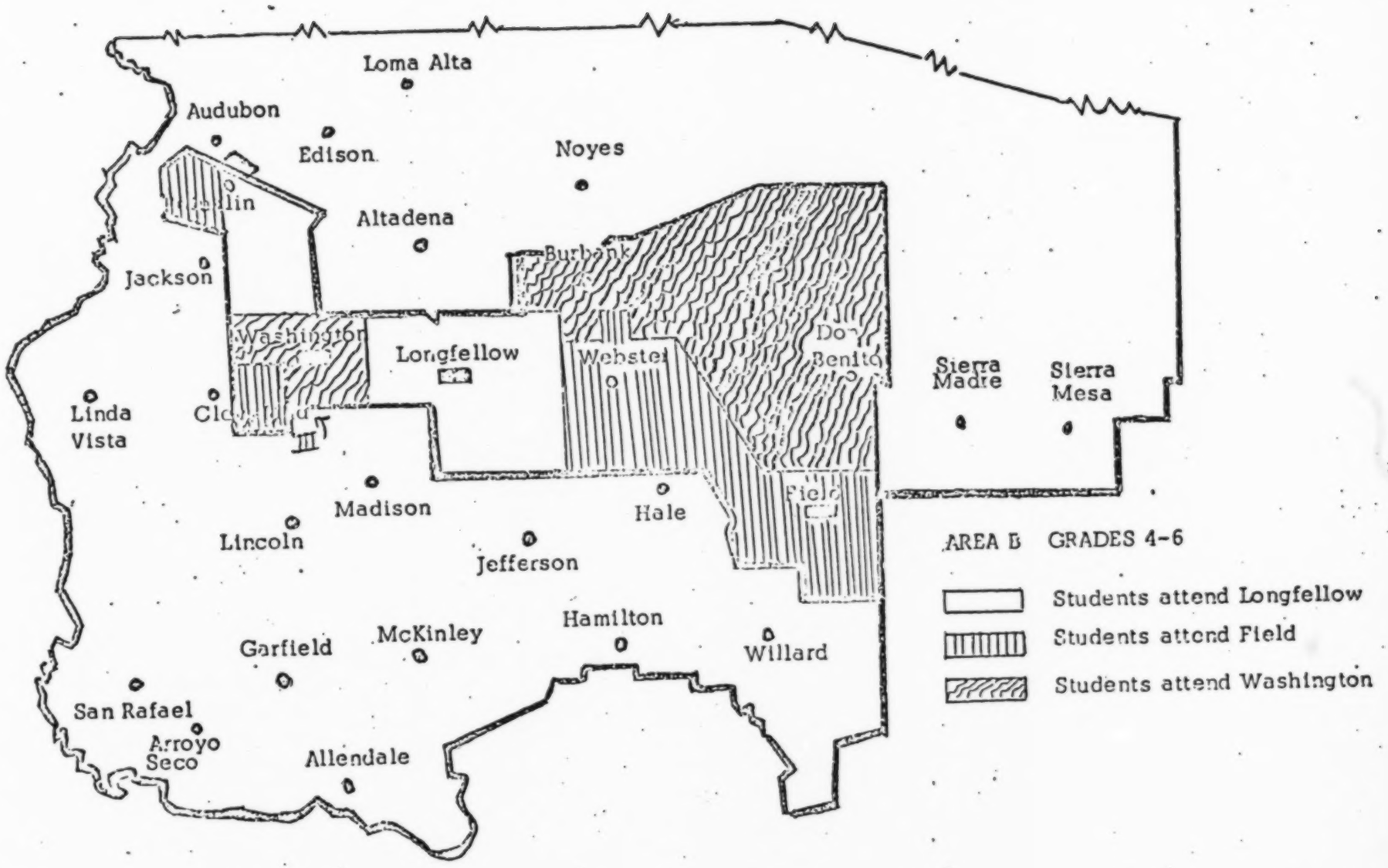
Pasadena Unified School District
Division of Elementary Education
Pasadena, California

Area "B"

INTRA-AREA CHANGES

Changes	Justification
Primary Zone 58 Change I Blocks 3, 4, 5, 7, 8, 10, 21, 22, 23, 24, 25, 26 From: Schools: Primary Burbank Upper _____ To: Schools: Primary Webster Upper _____	Changes were made in zones 28, 29, and 58 in order to make the attendance areas for the Burbank and Webster schools contiguous.
Zone 28 Change II Blocks 11, 14, 15, 20, 26, 27 From: Schools: Primary Webster Upper _____ To: Schools: Primary Burbank Upper _____	
Zone 29 Change II Blocks 14, 15, 22 From: Schools: Primary Webster Upper _____ To: Schools: Primary Burbank Upper _____	
Upper Zone 39 Change III Blocks 28, 29 From: Schools: Primary _____ Upper Field To: Schools: Primary _____	Provide better ethnic balance and permit more students to walk to school.
Zone _____ Upper Washington Blocks _____ From: Schools: Primary _____ Upper _____ To: Schools: Primary _____ Upper _____	


Loma Alta
Audubon
Edison
Noyes
Altadena
Burbank
Jackson
Don Benito
Sierra Madre
Sierra Mesa
Linda Vista
Hale
Madison
Lincoln
Jefferson
Hamilton
Willard
McKinley
Garfield
San Rafael
Arroyo Seco
Allendale
AREA B GRADES K-3
Students attend Burbank
Students attend Don Benito
Students attend Webster
Students attend Franklin


Loma Alta
Audubon
Edison
Noyes
Altadena
Jackson
Burbank
Washington
Longfellow
Webster
Don Benito
Sierra Madre
Sierra Mesa
Linda Vista
Madison
Hale
Field
Lincoln
Jefferson
Hamilton
McKinley
Garfield
Willard
San Rafael
Arroyo Seco
Allendale
AREA B GRADES 4-6
Students attend Longfellow
Students attend Field
Students attend Washington

AREA "B"	Ethnic Distribution (Per cent) 1970-71					Estimated Enrollment 1970-71	1969-70 Fourth School Month Enroll. Gr. 1-6		
	Anglo - Cauc.	Negro	Spanish Sur.	Orient.	Other			Ethnic Distrib. % C&O	% N
Grades Kindergarten - Three									
BURBANK - Primary School	58.0	36.3	4.3	1.4	0	628	535	98	2
DON BENITO - Primary School	57.3	34.0	7.3	1.1	.3	741	539	95	5
FRANKLIN - Primary School	48.6	38.0	10.5	2.6	.3	716	609	18	82
WEBSTER - Primary School	61.1	30.5	6.9	1.2	.3	872	678	93	7
Grades Four - Six									
FIELD - Upper School	58.2	34.0	5.5	1.9	.4	674	541	98	2
LONGFELLOW - Upper School	55.9	32.0	8.8	2.7	.6	784	1129	89	11
WASHINGTON - Upper School	60.0	35.4	2.6	1.7	.3	748	1144	9	91

Pasadena Unified School District
Division of Elementary Schools
Pasadena, California

Area "C"

INTRA-AREA CHANGES

Changes			Justification
Zone 41		See attached original and changed maps	Numerous minor changes were made to 1) improve ethnic balance; 2) improve distance; and 3) maintain continuous attendance areas.
Blocks All			
From:	Schools:	Primary Hamilton Upper _____	
To:	Schools:	Primary Jefferson Upper _____	
Zone 52			
Blocks 18, 19, 20, 25, 26			
From:	Schools:	Primary Hamilton Upper _____	
To:	Schools:	Primary Jefferson Upper _____	
Zone 52			
Blocks 15, 17, 21, 22, 23, 24			
From:	Schools:	Primary Willard Upper _____	
To:	Schools:	Primary Jefferson Upper _____	
Zone 57			
Blocks 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20			
From:	Schools:	Primary Hamilton Upper _____	
To:	Schools:	Primary Willard Upper _____	
Zone 66			
Blocks 13			
From:	Schools:	Primary Hamilton Upper _____	
To:	Schools:	Primary Jefferson Upper _____	

Page 2

Changes	Justification
Zone 67 Blocks 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 From Schools: Primary Willard Upper ..... To: Schools: Primary Hamilton Upper	
Zone 50 Blocks 24, 25, 26 From: Schools: Primary Jefferson Upper ..... To: Schools: Primary Willard Upper	
Zone 56 Blocks 6, 9, 12, 16, 20, 22, 26 From: Schools: Primary Jefferson Upper ..... To: Schools: Primary Willard Upper	
Zone 61 Blocks 6, 7, 8, 11, 12, 13, 14, 15 From: Schools: Primary Jefferson Upper ..... To: Schools: Primary Willard Upper	
Zone 62 Blocks 1, 2 From: Schools: Primary Jefferson Upper ..... To: Schools: Primary Willard Upper	

Page 3

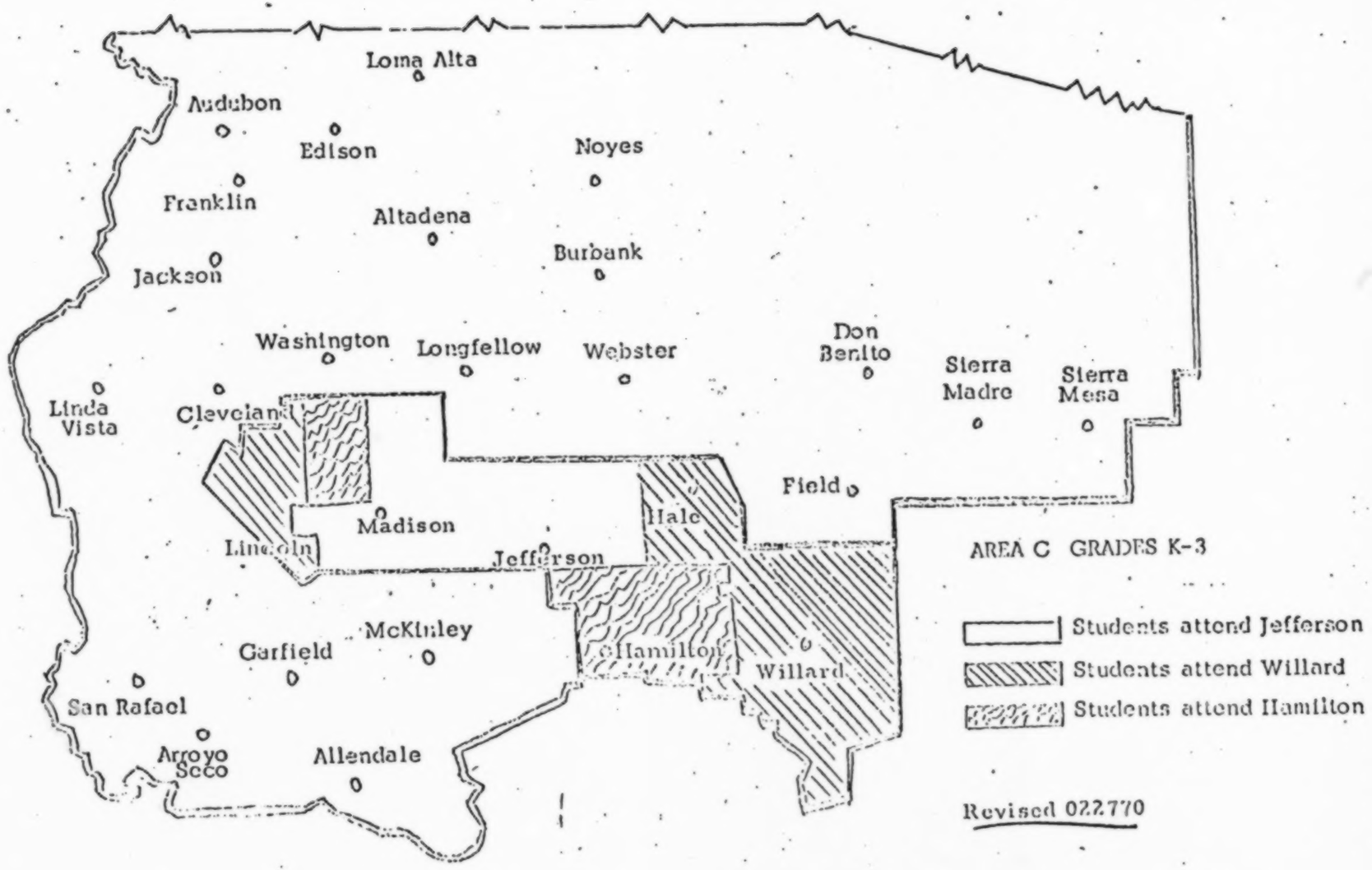
Changes	Justification
Zone 41 Blocks 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19 From: Schools: Primary ..... Upper Hale To: Schools: Primary ..... Upper Madison	Numerous minor changes were made to 1) improve ethnic balance; 2) improve distance, and 3) maintain contiguous attendance areas.
Zone 56 Blocks 1, 2, 3, 4, 5, 7, 8, 10, 11, 13, 14, 15, 17, 18, 19, 21, 23, 24, 25 From: Schools: Primary ..... Upper Hale To: Schools: Primary ..... Upper Madison	
Zone 64 Blocks 1, 2, 3, 4, 5, 6, 7 From: Schools: Primary ..... Upper Hale To: Schools: Primary ..... Upper Madison	
Zone ..... Blocks ..... From: Schools: Primary ..... Upper ..... To: Schools: Primary ..... Upper	
Zone ..... Blocks ..... From: Schools: Primary ..... Upper ..... To: Schools: Primary ..... Upper	

Page 4

Changes	Justification
Zone 65 Blocks 1, 3, 6, 7, 8, 9, 10, 11, 16, 17, 18 From: Schools: Primary ..... Upper Hale To: Schools: Primary ..... Upper Madison	Numerous minor changes were made to 1) improve ethnic balance; 2) improve distance, and 3) maintain contiguous attendance areas.
Zone 67 Blocks All From: Schools: Primary ..... Upper Madison To: Schools: Primary ..... Upper Hale	
Zone 68 Blocks 14, 15, 17, 18 From: Schools: Primary ..... Upper Hale To: Schools: Primary ..... Upper Lincoln	
Zone 52 Blocks 1, 2, 3 From: Schools: Primary ..... Upper Lincoln To: Schools: Primary ..... Upper Madison	
Zone 78 Blocks All From: Schools: Primary ..... Upper Lincoln To: Schols: Primary ..... Upper Hale	

Page 5

Changes	Justification
Zone 79 Blocks All From: Schools: Primary ..... Upper Lincoln To: Schools: Primary ..... Upper Hale	
Zone 52 Blocks 12 From: Schools: Primary ..... Upper Madison To: Schools: Primary ..... Upper Lincoln	
Zone 68 Blocks 14, 15, 17 From: Schools: Primary ..... Upper Hale To: Schools: Primary ..... Upper Lincoln	
Zone 62 Blocks 1, 2, 3 From: Schools: Primary ..... Upper Madison To: Schools: Primary ..... Upper Lincoln	
Zone 81 Blocks All From: Schools: Primary ..... Upper Madison To: Schools: Primary ..... Upper Lincoln	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Sierra Madre
Sierra Mesa
Linda Vista
Cleveland
Field
Madison
Hale
Lincoln
Jefferson
McKinley
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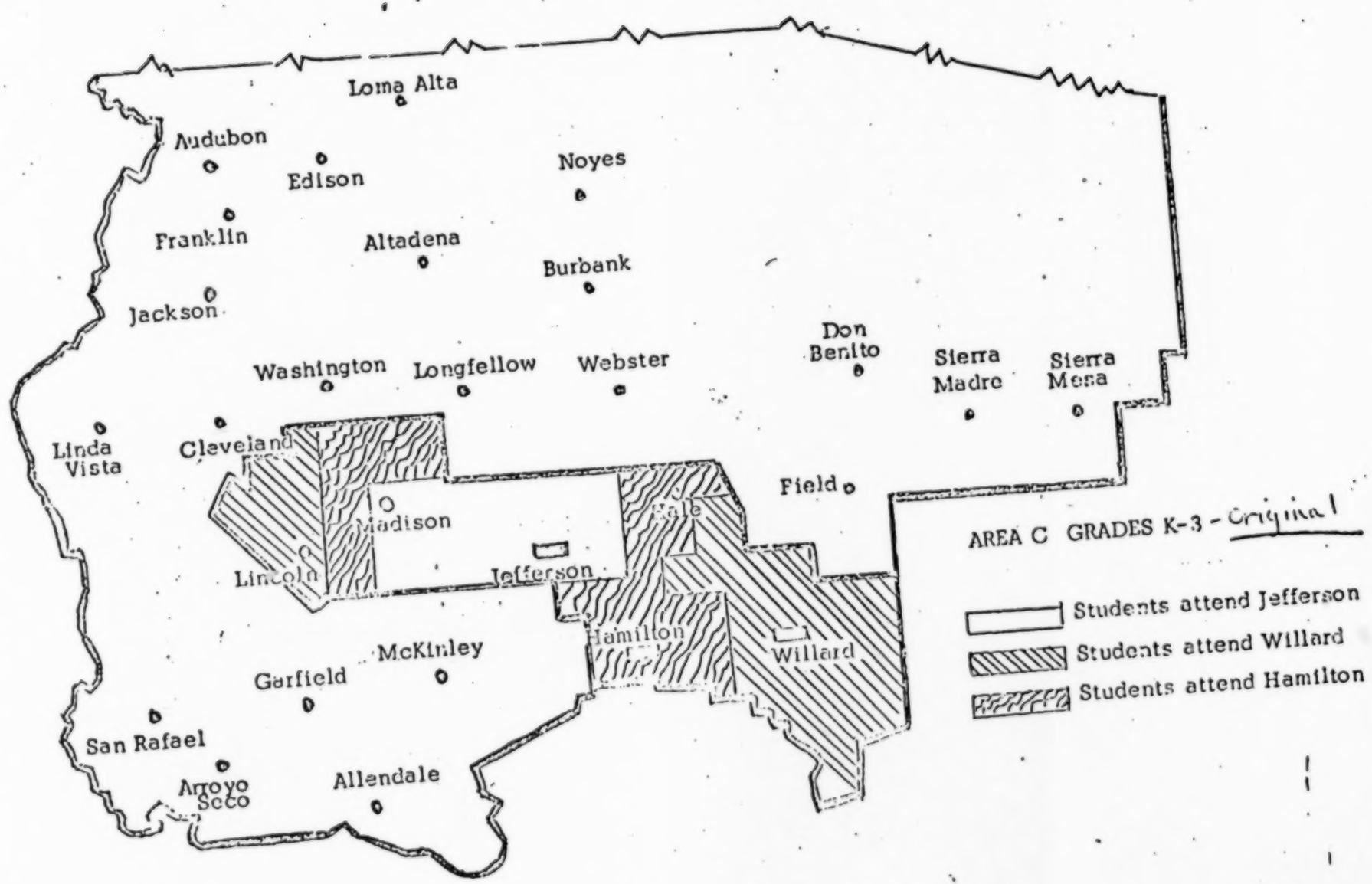
Willard
San Rafael
Arroyo Seco
Allendale
AREA C GRADES K-3
Students attend Jefferson
Students attend Willard
Students attend Hamilton
Revised 022770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Sierra Madre
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Webster
Linda Vista
Cleveland
Field
Madison
Lincoln
Jefferson
Hale
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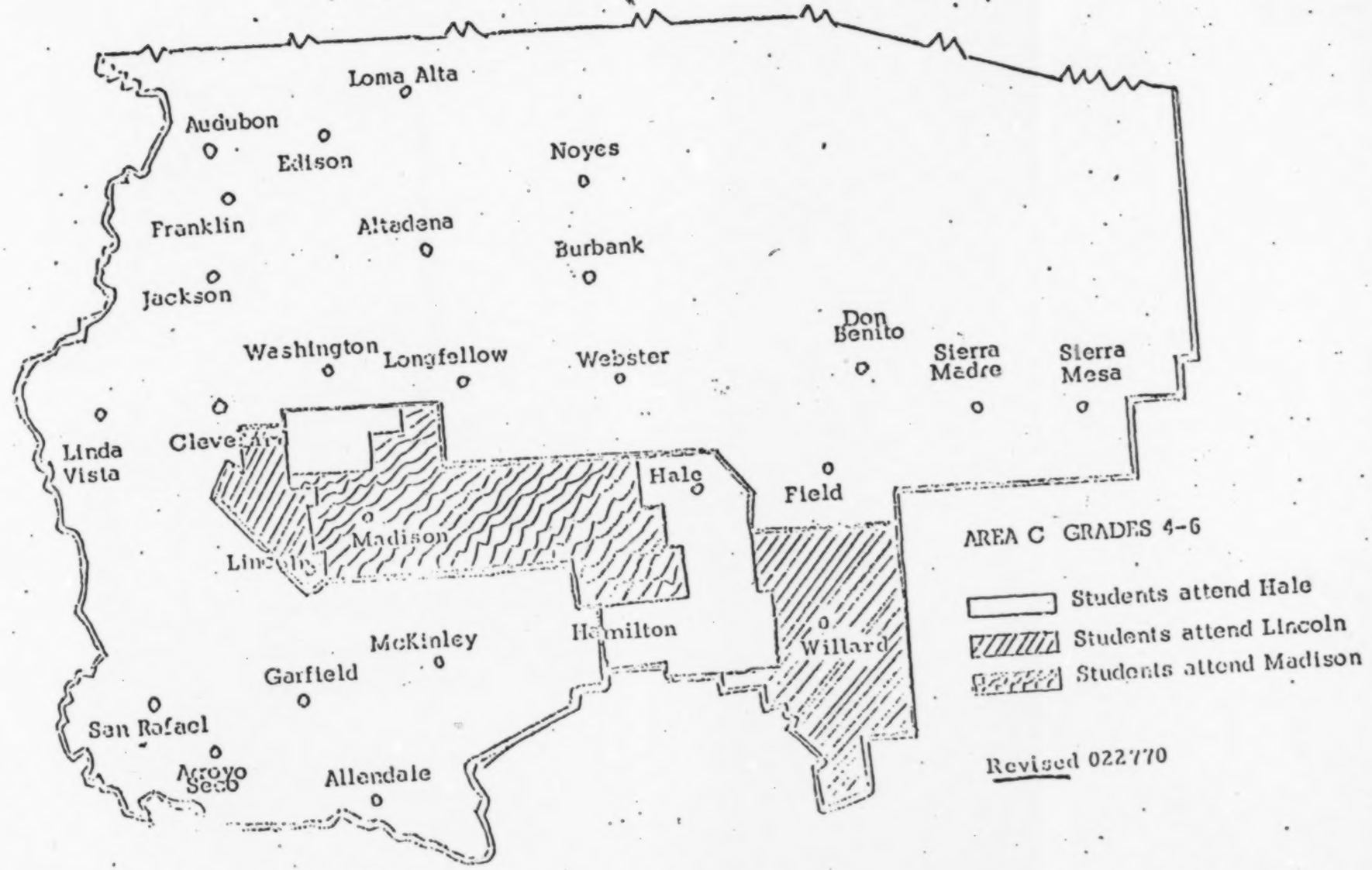
Willard
McKinley
Garfield
San Rafael
Arroyo Seco
Allendale
AREA C GRADES K-3 - Original
Students attend Jefferson
Students attend Willard
Students attend Hamilton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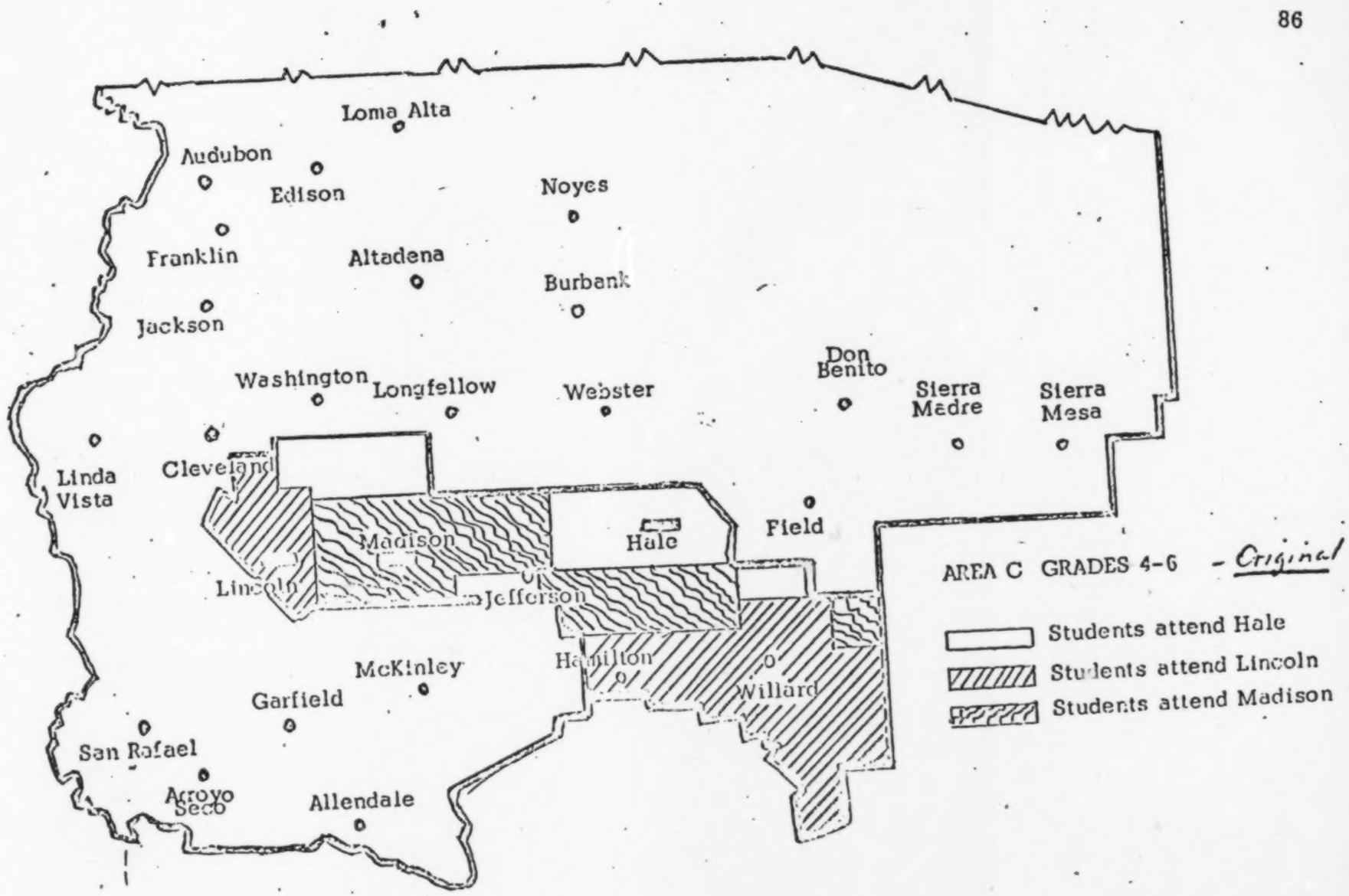
Linda Vista
Cleveland
Hale
Field
Madison
Lincoln
McKinley
Hamilton
Willard
Garfield
San Rafael
Arroyo Seco
Allendale
AREA C GRADES 4-6
Students attend Hale
Students attend Lincoln
Students attend Madison
Revised 022770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Don Benito
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Linda Vista
Cleveland
Madison
Hale
Field
Lincoln
Jefferson
McKinley
Hamilton
Willard
Garfield
San Rafael
Arroyo Seco
Allendale
AREA C GRADES 4-6 - Original
Students attend Hale
Students attend Lincoln
Students attend Madison

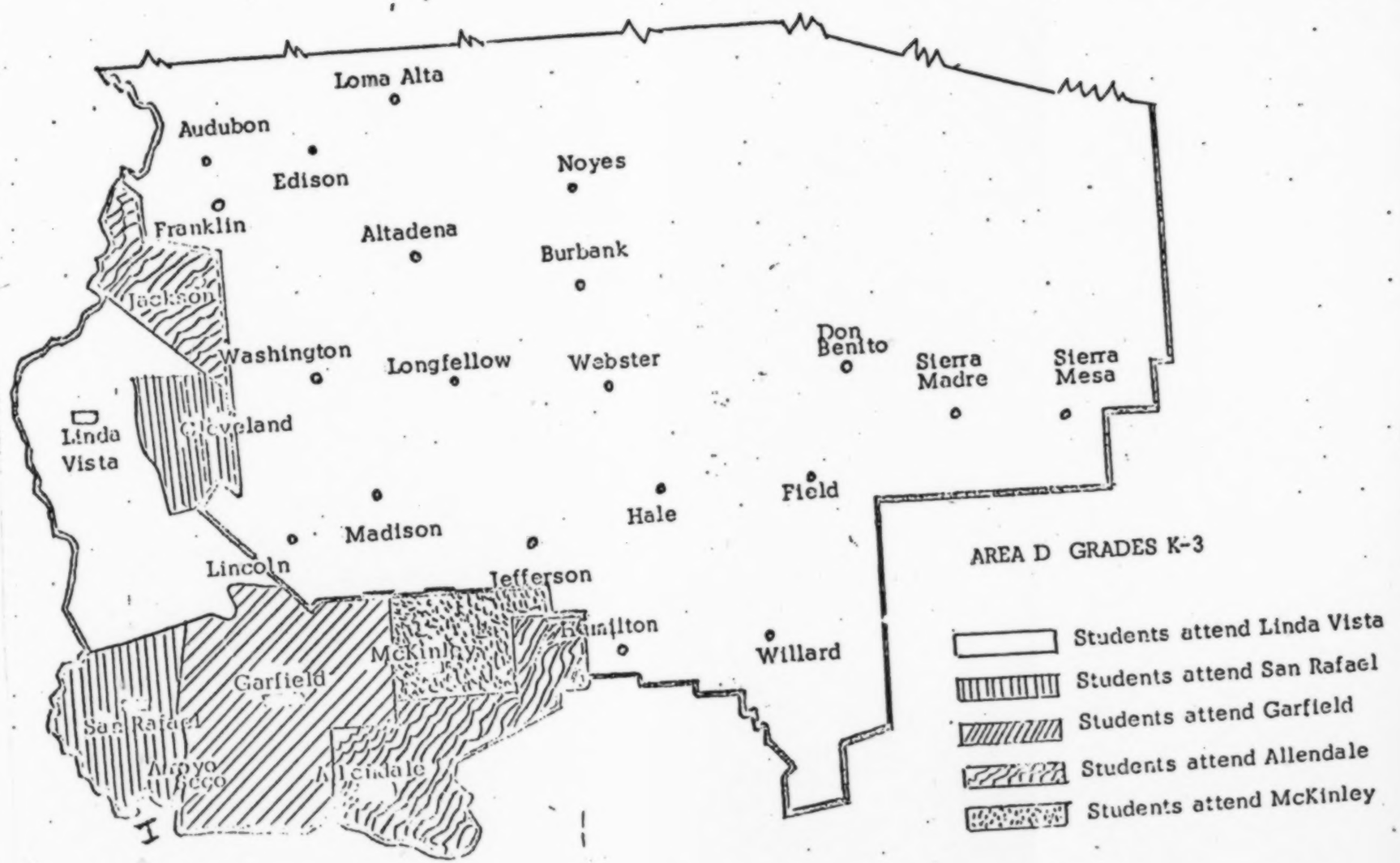
Pasadena Unified School District
Division of Elementary Education
Pasadena, California

Area "D"

INTRA-AREA CHANGES

Changes	Justification
Zone 82 Change I Blocks 8, 9, 19, 20, 21 From: Schools: Primary San Rafael Upper ..... To: Schools: Primary Arroyo-Garfield Upper	These modifications were made to rectify an error which would have removed children from their regular attendance zone unnecessarily, and in consideration of a freeway route.
Zone 82 Change II Blocks 8, 9, 19, 20, 21 From: Schools: Primary ..... Upper Cleveland To: Schools: Primary ..... Upper Jackson	
Zone 23 Change III Blocks 1, 24 From: Schools: Primary ..... Upper Jackson To: Schools: Primary ..... Upper Cleveland	
Zone ..... Blocks ..... From: Schools: Primary ..... Upper ..... To: Schools: Primary ..... Upper	
Zone ..... Blocks ..... From: Schools: Primary ..... Upper ..... To: Schools: Primary ..... Upper	

AREA "C"	Ethnic Distribution (Per cent) 1970-71					Estimated Enrollment 1970-71	1969-70 Fourth School Month Enroll, Gr. 1-6		
	Anglo.-Cauc.	Negro	Spanish Sur.	Orient.	Other			Ethnic Distrib. % C&O	% N
Grades Kindergarten - Three									
HAMILTON - Primary School	47.0	32.6	16.2	1.8	2.4	623	596	99	1
JEFFERSON - Primary School	46.7	24.2	23.1	2.8	3.2	888	857	94	6
WILLARD - Primary School	54.4	36.4	7.4	1.5	.3	971	824	100	0
Grades Four - Six									
HALE - Upper School	58.3	26.8	11.6	1.7	1.6	482	545	90	10
LINCOLN - Upper School	51.4	34.1	13.4	.9	.2	589	797	19	81
MADISON - Upper School	48.5	29.1	17.9	1.3	3.2	626	855	37	63


Loma Alta
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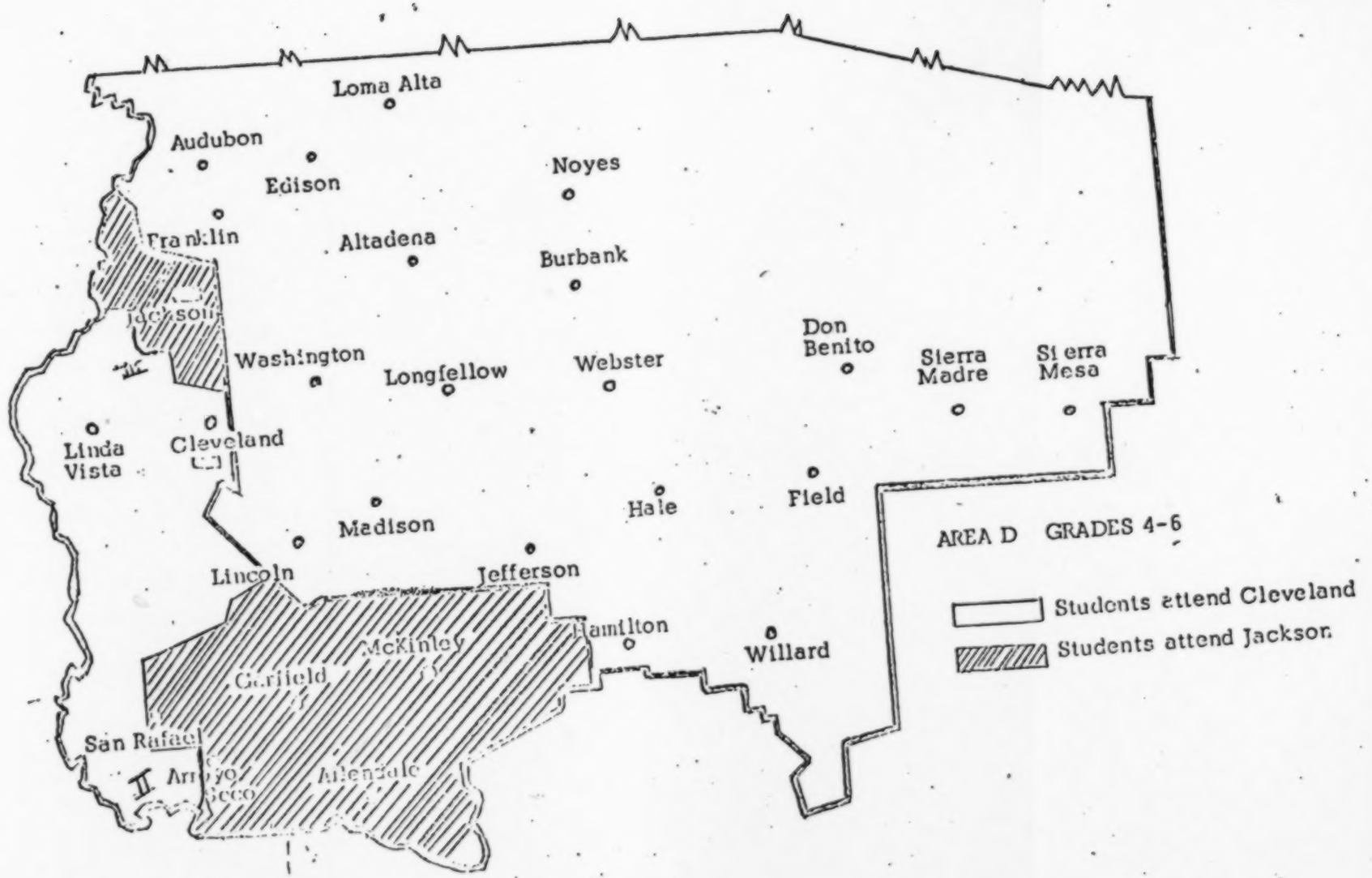
Sierra Mesa
Linda Vista
Cleveland
Madison
Hale
Field
Lincoln
Jefferson
Hamilton
Willard
McKinley
Garfield
San Rafael
Arroyo Seco
Allendale
I
AREA D GRADES K-3
Students attend Linda Vista
Students attend San Rafael
Students attend Garfield
Students attend Allendale
Students attend McKinley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Sierra Mesa
Linda Vista
Cleveland
Madison
Hale
Field
Lincoln
Jefferson
Hamilton
Willard
McKinley
Garfield
San Rafael
Arroyo Seco
Altadale
AREA D GRADES 4-6
Students attend Cleveland
Students attend Jackson

AREA "D"	Ethnic Distribution (Per cent) 1970-71 Anglo - Cauc.	Negro	Spanish Sur.	Orient.	Other	Estimated Enrollment 1970-71	1969-70 Fourth School Month Enroll. Gr. 1-6	Ethnic Distrib. % C&O	% N
Grades Kindergarten - Three									
ALLENDALE - Primary School	47.3	35.9	10.0	5.8	1.0	512	432	99	1
ARROYO-GARFIELD-Primary Sch.	43.5	23.2	31.7	.6	1.0	306	356	86	14
LINDA VISTA - Primary School	56.3	33.9	3.5	5.7	.6	174	176	99	1
*McKINLEY - Primary School	54.2	15.0	22.4	5.1	3.3	214	209	88	12
SAN RAFAEL - Primary School	60.5	33.9	2.9	2.7	.0	339	404	99	1
Grades Four - Six									
JACKSON - Upper School	48.3	29.2	16.3	5.0	1.2	742	654	16	84
CLEVELAND - Upper School	59.6	35.9	1.8	2.5	.2	443	513	5	95

*This school property is under consideration for future sale.

BEST COPY AVAILABLE

RELOCATABLES.

Elementary

Space Utilization

Complete implementation of the area plan will result in the reallocation of 39 permanent classrooms and 25 relocatable classrooms. It will be necessary to move 17 relocatable classrooms to other sites to accommodate adjusted enrollments under the area plan. The remaining classrooms will be used to accommodate classes for Special Education, Opportunity and ESEA programs. Attached is a detailed breakdown of the classroom requirements at various schools.

Time Frame

The moving of the relocatables would have to take place between the end of this school term and the beginning of the fall term. This is an ambitious effort to complete, but it is felt that between now and June 15 it is possible to hire an architect, get State approval and receive bids for relocatables, as well as get board approval. All that would be left would be the actual physical movement of the relocatables. Also, preliminary electrical work can be done and foundations poured between now and the end of school. These classrooms, of course, would not be available for the summer school program.

Cost

Move 17 relocatables at $2,750 each=$46,750.

Architect Fees	$ 150
OAC Fees	50
Physical Moving	1,100
Foundations	800
Utilities	650
	$2,750

Classroom Adjustments.

Area "A".

Base School	Est. Enrollment	Rooms Available Present: Permanent	Rooms Available Present: Relocatables	Rooms Needed	Adjustment	Unassigned Rooms Available After Adjustment: Permanent	Unassigned Rooms Available After Adjustment: Relocatables	Relocatables to Be Moved Onto Site
K-3								
Audubon	655	15	4	20	+1			1
Noyes	481	11		14	+3			3
Sierra Madre	641	3	16	20	+1			1
Sierra Mesa	582	16		18	+2			2
4-6								
Altadena	730	27		25	−2	2		
Edison	539	5	15	18	−2		2	
Loma Alta	601	18	2	21	+1			1
Totals						2	2	8

Classroom Adjustments.

Area "B".

School Base	Esti-Enrollment	Rooms Available Present: Permanent	Rooms Available Present: Relocatable	Rooms Needed	Adjustment	Unassigned Rooms Available After Adjustment: Permanent	Unassigned Rooms Available After Adjustment: Relocatable	Number Relocatables to Be Moved Onto Site
K-3								
Burbank	628	9	8	20	+3			3
Don Benito	741	24		22	−2	2		
Franklin	716	15	6	21	0			
Webster	872	22		27	+5			5
4-6								
Field	674	22		23	+1			1
Longfellow	784	27	3	27	−3		3	
Washington	748	30	8	26	−12	4	8	
Totals						6	11	9

Classroom Adjustments.

Area "C".

Base School	Est. Enrollment	Rooms Available Present: Permanent	Rooms Available Present: Relocatables	Rooms Needed	Adjustment	Unassigned Room Available After Adjustment: Permanent	Unassigned Room Available After Adjustment: Relocatables	Number Relocatables to Be Moved Onto Site
K-3								
Hamilton	623	18	2	20				
Jefferson	888	10	17	27				
Willard	971	27	1	28				
4-6								
Hale	482	20	3	17	−6	3	3	
Lincoln	589	34		21	−13	13		
Madison	626	19	10	21			8	
Totals						16	11	

Classroom Adjustments.

Area "D".

Base School	Esti-mated Enrollment	Rooms Available Present: Permanent	Rooms Available Present: Relocatables	Rooms Needed	Adjustment	Unassigned Rooms Available After Adjustment: Permanent	Unassigned Rooms Available After Adjustment: Relocatable	Number Relocatables to Be Moved Onto Site
K-3								
Allendale	512	14	3	16	−1		1	
Arroyo-Garfield	306	13		10	−3	3		
Linda Vista	174	1	4	6	+1			1
McKinley	214	9		7	−2	2		
San Rafael	339	16		11	−5	5		
4-6								
Cleveland	443	20		15	−5	5		
Jackson	742	19	6	25	0			
Totals						15	1	1

ORDER APPROVING DEFENDANTS' PLAN FOR INTEGRATION.

Entered 10 March 1970.

Defendants having filed with the Court, pursuant to the Judgment entered herein on January 23, 1970, their Plan for Integration of the Pasadena Unified School District, which said Plan is dated February 18, 1970 and was filed on that date, and the Court having issued its Order to Show Cause re Plan for Integration of the Pasadena Unified School District on February 18, 1970, requiring plaintiffs and plaintiff-intervenor to appear in Court on March 4, 1970 and then and there show cause why said Plan for Integration should not be accepted and approved by this Court; and defendants having thereafter filed with the Court on March 2, 1970 their amendment to the Plan for Integration; and the matter having come on regularly for hearing on March 4, 1970, plaintiffs appearing by their attorneys, Albert C. Lum and Boyko and Simmons by Michael W. Roberts, and plaintiff-intervenor appearing by its attorneys, John N. Mitchell, Attorney General, Jerris Leonard, Assistant Attorney General, Wm. Matthew Byrne, Jr., United States Attorney, by Bernard Shapiro, David Norman, Brian Landsburg and James Stotter II, and defendants appearing by their attorneys, Pollock, Palmer & Metzler, by John P. Pollock and John Andrew Miller; and the Court, having heard argument and having interrogated witnesses, now makes its Order:

IT IS HEREBY ORDERED AND ADJUDGED that the Plan for Integration of the Pasadena Unified School District, dated February 18, 1970 and filed herein February 18, 1970, as amended and modified by the amendment thereto dated February 27, 1970 and filed herein March 2, 1970, is hereby found to be in conformance with the Judgment entered herein January 23, 1970 and is hereby approved.

Dated: March 10, 1970.

/s/ MANUEL L. REAL,
United States District Judge.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Filed March 12, 1970.

Upon consideration of all testimony and exhibits received as evidence in this case, the Court makes the following findings of fact and conclusions of law. Findings of fact numbered 1 through 5, inclusive, are identical to the Findings of Fact filed herein January 22, 1970. The additional findings illustrate the facts upon which the Court relied in making those original findings. Conclusions of law numbered 1 and 2, below, are identical to those filed herein January 22, 1970.

FINDINGS OF FACT.

I. *Original Findings of Fact.*

1. The evidence in this case establishes that there is racial imbalance or segregation in the student bodies and faculties of the Pasadena Unified School District at all levels, elementary schools, junior high schools, and senior high schools.

2. The imbalance is a result of defendants' failure to carry out their announced policies of integration, policies that relate both to faculty and student assignments.

3. These failures have occurred in connection with the teacher assignment, hiring, and promotion policies and practices of the District, its construction policies and practices, and its assignment of students.

4. The Court has also noted with concern the racial effects of the District's interclass grouping policies and procedures. Because of the delicate educational nature of decisions concerning grouping, the Court does not at this time deem it appropriate to enter an Order in this regard, but urges the people of Pasadena to examine carefully the grouping policies of their District.

5. Pasadena City Board of Education has used a neighborhood school policy and a policy against forced cross-town bussing to explain its failure to carry out its policies in integrating students and teachers and staff members. The neighborhood school policy is an educational consideration, but it does not normally have constitutional proportions. Under facts of which Pasadena City Board of Education has been aware since at least 1958 as they affect the District's elementary schools, it can be recognized that the use of the neighborhood school policy results in racial imbalance and increasing racial imbalance. The same is true of the policy against cross-town bussing.

II. *Background Facts.*

6. This is a school desegregation action, commenced by sudents in the Pasadena Unified School District (hereinafter called, the District), in which the United States intervened as plaintiff after the Attorney General certified it was a case of general public importance, pursuant to Title IX of the Civil Rights Act of 1964, 42 U. S. C. 2000h-2. The defendants are the Pasadena City Board of Education (hereinafter called, the Board), its members, and the District's superintendent. Two former Board members, Steve Salisian and John Welsh,[1] were named as defendants, but remain in the case only as to the issue of attorneys' fees raised by plaintiffs.

7. The Board operates the 28 elementary schools, five junior high schools, three senior high schools, and two special schools of the District. The District contains within its boundaries all of the City of Pasadena, the unincorporated town of Altadena, the City of Sierra Madre, and portions of Los Angeles County near the eastern boundary of the City of Pasadena.

8. For the 1969-70 school year the District has enrolled 30,622 students, 17,859 Caucasian, 9,173 black, and 3,590 of

1. By motion after judgment Henry S. Clark was substituted for defendant John Welsh in his capacity of a member of defendant Board. John Welsh resigned his position and he was replaced on the Board by defendant Henry S. Clark.

Other minority ethnic or racial backgrounds.[2] There are 1,198 teachers, 1,034 white, 121 black, and 43 others. (Govt. Exs. 1D and 3)[3]

III. *Segregation of Students.*

A. The Fact of Racial Segregation.

9. Racial segregation or imbalance[4] is especially pronounced in the elementary schools of the District. During the school year 1969-70, 85 percent of the District's black elementary school students attend the eight majority black elementary schools, while 93 percent of its white elementary students attend the other 21 elementary schools. There are 13 elementary schools with less than five percent black enrollments; 61 percent of the District's white elementary students and one percent of its black elementary students attend those schools. Cleveland Elementary School has only seven white students in an enrollment of 542. Washington Elementary School is also over 90 percent black, and has 28 white students, 1060 black students, and 70 other students. Three other elementary schools have enrollments over 80 percent black, Jackson, Franklin, and Lincoln; Madison and Audubon are over 60 percent black; Edison is 59 percent black. (Govt. Exs. 1 and 2)

10. At the junior high school level, nearly have of the District's black students (49 percent) attend one school, Wash-

2. Throughout these findings, and consistent with District practice, the terms Caucasian and white are used to describe Caucasians without Spanish surnames; Black and Negro are used interchangeably; Other refers to Spanish surnamed Caucasians, Orientals, Indians, and all persons of other minority racial or ethnic backgrounds.

3. Throughout these findings, Govt. Ex. is used to refer to Government's Exhibit; Pl. Ex. refers to Plaintiffs' Exhibit; Def. Ex. refers to Defendants' Exhibit.

4. Racial segregation and racial imbalance are two names for the same phenomenon, racial separation. The terms are used interchangeable throughout these findings and conclusions.

ington Junior High School, which itself has an enrollment 88 percent black. Wilson Junior High School, on the other hand, has an enrollment less than one-half of one percent black. The other junior high schools are reasonably well racially balanced. (Govt. Exs. 1 and 2)

11. Muir High School has a minority of white students (48 percent); nearly half (48 percent) of the District's black senior high students attend that school; its enrollment is 37 percent black. Pasadena High School is 12 percent black and 82 percent white. (Govt. Exs. 1 and 2)

12. The degree of racial separation within the District has been consistently high, particularly at the elementary level, over the past 15 years. Each year over 90 percent of the white elementary students have attended majority white schools, while over half of the black elementary students have attended majority black schools. At least 85 percent of the District's Negro elementary school children have attended the eight schools that today have majority black enrollments in every year for which records are in evidence. (Govt. Exs. 1 and 2)

B. Defendant's Actions and Inactions That Have Contributed to and Intensified Racial Separation.

13. Since 1954 defendants have never made an attendance area change that involved assigning students from a majority white residential area to a majority black school. (Govt. Exs. 1 and 11-A through 11-K; Tr. pp. 264, 1797 and 2040)[5]

14. Particularly instructive in this regard is the District's history of assigning elementary and junior high school students from Linda Vista, the area of Pasadena west of the Rose Bowl and north of the Colorado Freeway. The houses in Linda Vista are generally expensive; nearly all the occupants are white. The area has its own elementary school, Linda Vista, with an enrollment this year of 163 white children, one black child, and

5. Page references are to the typed daily transcript.

12 other children. Cleveland School, 97 percent black, is a mile away. Linda Vista has capacity for 255 students. Cleveland, until 1962, had capacity for 230 students. In 1962 defendants built a ten-room addition to that school, increasing its capacity to 560 students. When the Linda Vista School opened, there were not enough children in the area to fill even its limited capacity, and until 1954 the District assigned white children from the Cleveland and Lincoln attendance areas to fill the school. From 1967 until 1969, while the school was closed temporarily due to structural deficiencies, the District transported all Linda Vista's children in kindergarten and grades one through six three miles across the Colorado Freeway to San Rafael Elementary School, where the enrollment in 1967-68 was 457 white, one black, and 11 other students. Five majority black elementary schools, three of them with more unused capacity than San Rafael, are closer to the Linda Vista School than is San Rafael. (Govt. Exs. 1, 6, 10-P, 11-L, 11-M, 14, 12, 13A-C, 70-Exs. 2A-2B, 88-A, 91, Tr. pp. 287-288)

Students from Linda Vista have attended three white junior high schools, but have never attended the nearest junior high school, Washington. While Washington has been a majority black school only since approximately 1960, it has had more black students than the other four regular junior high schools combined in every year for which records are in evidence. Prior to 1951, the District transported Linda Vista students to Eliot Junior High School, which at that time had no black students. From 1951 to 1961 Linda Vista's junior high school was La Canada, which never had a Negro student. In 1961, La Canada withdrew from the District. At that time, the only two junior high schools in the west half of the District with unused capacity were Washington and McKinley.[6] Washington's enrollment was approximately 60 percent black (and 20 percent white), while McKinley's was approximately 70 percent white (and 15 per-

6. McKinley's enrollment was 1094, its capacity 1210; Washington's enrollment was 1196, its capacity 1278. (Govt. Exs. 1 and 42-B, Ex. 25)

cent black). Washington is two and a half miles from Linda Vista School, McKinley about three and a half. The Board conducted a meeting at Linda Vista Elementary School on November 29, 1960 to discuss the pending assignment; most parents from the area who spoke expressed a preference for McKinley, some admittedly for racial reasons. Thereafter, the Superintendent appointed a citizen's committee to study the matter. The committee openly considered both racially discriminatory arguments and nonracial arguments before recommending that Linda Vista students be assigned to McKinley Junior High School. The Board voted three to two to do so. The two dissenting members favored assignments of Linda Vista students to Washington because it was closer and because such an assignment would increase integration. While the Board members who favored McKinley assigned nonracial reasons for their vote, it is clear that race was a crucial factor in the decision. (Govt. Exs. 1, 10-A, 10-O, 11-S, 17, 42-B-Ex. 25,[8] 70-Exs. 2A-2D, 86, Tr. pp. 350-370)

15. Similarly, racial considerations entered into the Board's 1962 decision to transfer a portion of majority black Lincoln's attendance area to Cleveland, already over 85 percent black. In 1968, the Board added still more black students to Cleveland's enrollment when it assigned a portion of the Washington attendance area to Cleveland. (Govt. Exs. 1, 10-C, 10-E, 11-C, 11-G, 11-P, 11-R, and 68-E, Ex. 41, Tr. pp. 371-373)

16. Another example of the Board's maintenance and increase of racial imbalance is the attendance areas it has drawn for the District's two largest elementary schools, Washington and Longfellow. The two schools are located little more than a mile from each other. In July of 1954, the District assigned a formerly "neutral" zone[9] between the two schools to Longfellow,

8. The use of "Ex." and a number following another exhibit number denotes an exhibit to a deposition.

9. Until after the Supreme Court's *Brown* decision in May of 1954, the District maintained four neutral zones in which students were permitted to attend either nearby schools with relatively large numbers of Negro students or more distant, but nearly all-white schools. When the neutral zone policy was abandoned three of the areas were assigned to the nearest schools. Until 1954, the District also permitted white students freely to transfer from schools with predominantly black enrollments to all-white or nearly all-white schools, such as Linda Vista. (Govt. Exs. 10-A, 11-A, 11-B, 88-A)

although most of the area was closer to Washington. All or nearly all the students in the area were white; Washington was 27 percent black; Longfellow was 97 percent white. A month later, the Board reassigned the northern portion of the "neutral" zone, but to Altadena (which had an enrollment 99.9 percent white), rather than to Washington. Altadena was over-enrolled at the time, in terms of its capacity, while Washington was under-enrolled. (Govt. Exs. 1, 6, 10-A, 10-B, 11-A, 11-B, 11-L, 11-M, 14, and 88-A)

Ten years later, in 1964, Washington had become 81 percent black, Longfellow was 88 percent white. Both schools were seriously overcrowded. The Board relieved the overcrowding at Longfellow by reassigning white students from the eastern edge of its attendance area to Webster and Burbank elementary schools, both over 97 percent white. Webster was already over-enrolled, but the Board did not consider assigning white students either to Washington or to Madison, which by 1964 had a minority of white students. The Board did not relieve the overcrowding at Washington, as by assigning black students to Longfellow or Altadena, but instead added an eighth transportable classroom at Washington for the 1964-65 school year. Neither Altadena nor Longfellow had any transportables that year. (Govt. Exs. 1, 10-B, 11-D, 11-N, 14, and 70, Ex. 2, Tr. pp. 2140-2143)

In 1966, the Board did attempt to relieve overcrowding at Washington. However, rather than reassigning black students to a white school, such as Altadena or Longfellow, the Board assigned additional black students to Madison, already 44 percent black. Since that assignment aggravated an existing condi-

tion of overcrowding at Madison, the Board assigned two portions of the Madison zone to Longfellow. However, Longfellow was already overcrowded, and the two areas were returned to Madison. For reasons now unknown to the Board president at the time, the students in those areas were permitted to attend either Longfellow or Madison. Another portion of the Madison zone was assigned to McKinley. The portions of Madison assigned to Longfellow (then nominally returned) and McKinley were majority white residential areas. The chief racial result of all these changes was the creation of another majority black elementary school; Madison gained approximately 100 black students and lost 80 white students; its black enrollment rose to 55 percent, its white enrollment fell to 25 percent. Longfellow and McKinley each gained white students, and both remained over 70 percent white. (Govt. Exs. 1, 10-D, 11-E, 11-Q, 14, 66, pp. 4-12, 15 and Ex. 1, and 77, Tr. pp. 715-716 and 2143-2146)

17. At the senior high school level, defendants have made occasional efforts to improve racial balance, but the efforts have been offset in part by changes in senior high school attendance areas that increased imbalance. In and around the year 1957, while a decision was being made as to where to locate Pasadena High School, the Board members were specifically aware that if they located the school in East Pasadena, they would have to exercise particular care in drawing attendance zone lines if they were to avoid having most black students attend Muir High School and most white students attend Pasadena High School. The District did open the new high school in East Pasadena in 1960. In 1961, 1963, 1964, 1966 and 1967 the Board made decisions that increased the concentration of black students at Muir High School. In 1961 the Board subtracted from the Muir High School attendance area and added to the Pasadena High School attendance area the property enclosed within the predominantly white Noyes and Burbank Elementary School attendance areas. In May of 1967, the Board reassigned this area to

Muir High School, in order to increase integration. However, on July 10, 1967, the Board rescinded that action and reassigned the area to Pasadena High School. In 1969 defendants took action designed to assign approximately 80 percent of the students in the Noyes and Burbank area to Muir High School. In 1963, the defendants refused to consider a plan recommended to it by a citizens-staff advisory committee that would have resulted in a more nearly equal distribution of white and black students between Muir and Pasadena High Schools. In 1964, the defendants assigned high school students from the white Arroyo Seco Elementary School attendance area to Blair High School, and in 1966, they assigned senior high school students from the white San Rafael Elementary attendance area to Blair High School. These two areas had previously been within the Muir High School attendance area, and the Board took no adequate steps to replace the white students lost as a result of the two moves. (Govt. Exs. 10-K, 10-L, 10-M, 11-H, 11-K, 11-O, 11-V, 68-A pp. 61, 88-C, 88)

In each of the years mentioned in the preceding paragraph of this finding, commencing in 1961, defendants took steps to increase the number of white students or decrease the number of black students at Muir. However, except for one zone change that remained in effect for one year (1963), none of those steps added as many white students to Muir as the Board's simultaneous actions subtracted. The Board did take action so that in 1964 there was a reduction of the number of black students at Muir by the creation of a Geographic and Controlled Open District, a device that resulted in the transportation of black students who lived across the street from Muir High School to Pasadena High School or Blair High School. (Govt. Exs. 10-L, 10-M, 11-V, 64, pp. 18-23)

18. The Board and the District's chief administration officers have recognized the need for integration in the District's elementary and junior high schools, as well as senior high schools, since at least 1958. However, the District has taken no

effective action to integrate its elementary schools or its two most segregated junior high schools, Washington and Wilson. Numerous promises of studies and action led to nothing beyond the adoption in 1964 and 1965 of open enrollment or free choice plans that, until 1968, permitted a small number of both black and white students to escape Negro schools. The largest number of black students to take advantage of this plan at the elementary level was 86; in the school year 1965-66, of those 86, 40 went to minority white schools, Cleveland and Garfield. (Govt. Exs. 1, 11-0, 16, 19, 24, Tr. pp. 2038-2040 and 2255-2256)

19. The Board has consistently rejected proposals from citizens' committees, its superintendent, and other Board members that would result in significant increases in integration, particularly at the elementary and junior high school level. In 1962, the Board had the Superintendent appoint a citizens-staff committee to review districting problems "at the elementary, junior, and senior high school levels." The committee recommended senior high school attendance area changes that would have increased integration substantially, but the Board rejected those changes in favor of the Open District plan. The Board thereafter voted to disband the committee and not to permit it to study or make recommendations concerning elementary and junior high schools. (Govt. Exs. 11-O, 19, 25-A, 25-G)

During the winter and spring of 1964, the Board received numerous proposals for elementary school desegration from ad hoc citizens' committees. Board member Shatford urged the study of a triad plan, combining three schools with adjoining attendance areas. The Board's response was to vote not to give further consideration to elementary school redistricting. When Mr. Shatford urged study of junior high school segregation in May of 1964, the Board voted not to consider the matter until 1965. (Govt. Exs. 11-O, 47, Tr. pp. 391-394, 584, 586-587)

In 1965, the Board appointed another citizens' committee, to make recommendations for a bond election. The Board rejected each suggestion by the committee that would have led to additional integration, including the replacement of Arroyo Seco with a larger school, the location of a new junior high schools elsewhere than in east Pasadena, and redistricting elementary schools. (Govt. Exs. 26, 27, pp. 49-52, 89, Tr. 2050-2051)

In July of 1967, the Board rescinded Plan A for senior high school redistricting, despite the strong contrary recommendation of Superintendent Paul Salmon. Thereafter, Dr. Salmon recommended locating a new integrated elementary school east of Lake Avenue to relieve overcrowding at Washington and Longfellow. Mr. Salisian instructed him not to specify a location and said he would not support a location east of Lake Avenue for the school. The Board did, nearly a year after rescinding Plan A, authorize the appointment of a director of long range planning, but unanimously directed that he study only senior high schools. (Govt. Exs. 88-P, 103-C, Tr. pp. 256-260, 274-282)

20. In declining to accept recommendations for substantial integration, the Board and members of the administration relied in part, from 1963 through 1967, on an opinion of the county counsel of Los Angeles County to the effect that the Constitution is color blind and that the Board could not take race into account in attempting to improve racial balance. That opinion, rendered June 7, 1963, was directly repudiated by the Supreme Court of California on June 27, 1963, in *Jackson* v. *Pasadena City Board of Education*. Pasadena's school officials knew that decision was contrary to the advice they had received from county counsel; they ignored it. Similarly, the Board ignored an opinion of the Attorney General of California that a school board could consider race in attempting to overcome segregation. That opinion, rendered August 15, 1963, was brought specifically to the attention of the Board. The two members of the Board who favored increased integration sought to have the Pasadena Board obtain an opinion on the subject from the Attorney General, but the Board president failed to concern

himself with the matter, and the Board majority continued to rely on county counsel's opinion. The Board also ignored a February 1963 directive from the State Board of Education to consider race to overcome racial imbalance. On August 16, 1967, the Board received further notice from a state court that it should act to integrate its schools. A year later, when the Board had taken no effective action, plaintiffs filed this action. It was not until September of 1969 that the Board permitted District officials to commence serious consideration of elementary school integration. (Govt. Exs. 22, 23, 68-A, p. 89, 88-U, 92, Tr. pp. 388-389, 477, 1480, 1733, 2085-2088, 2132-2133, 2255-2256, 2259-2262, *Jackson* v. *Pasadena Board of Education*, 382 P. 2d 78 (1963), 42 Op. Cal. Atty. Gen. 33 (1963))

21. When the Board did decide to take action to integrate at the elementary level, it decided to delay the commencement of implementation until the fall of 1971. All Board members favored delay in completion of implementation until 1972 at the secondary level and until 1973 or later at the elementary level. (Govt. Exs. 43, pp. 28-32, 56, pp. 40- 42, 63, pp. 23-25, 65, pp. 25-26, Tr. pp. 1507, 1601, 1635-1638, 1778-1779, 1800, 2237-2240)

22. The defendants have adopted a policy of permitting certain schools at each level of instruction to obtain a larger percentage of black student enrollment than in the District as a whole, while attempting to insure that other schools in the District will not obtain a greater percentage of black student enrollment than the percentage of black students in the district as a whole. At the senior high school level, this policy has led the defendants to adopt a policy that will make it unlikely that Blair High School or Pasadena High School will have an enrollment greater than 24 percent black, while it has adopted no such policy as to Muir High School. At the junior high school level, defendants have made adjustments at attendance zones so that Eliot Junior High School, Marshall Junior High School, McKinley Junior High School, and Wilson Junior High School

will have an enrollment no more than 30 percent black. They have taken no such step concerning Washington Junior High School. At the elementary level, the defendants have adopted a program to insure that schools with less than 30 percent black enrollment, will continue to have predominantly white enrollments, while they have taken no such steps concerning the predominantly black elementary schools. (Govt. Exs. 1, 10-I, and 42-A, pp. 82-86, Tr. pp. 1683-1685)

23. Defendants have used transportation provided at school district expense to make it possible for white children to avoid attending schools with greater percentages of black students enrolled than in the District as a whole. The District has transported black children at District expense to increase the amount of racial integration, but it has not transported children from majority white residential areas to majority black schools to increase the amount of racial integration. Examples of transporting white students to avoid integration include the transportation of white junior high school students from La Canada to Eliot and Marshall, white junior high school students from Linda Vista to Eliot, La Canada, and McKinley, white elementary students from Linda Vista to San Rafael, and white elementary students from Jefferson to Willard, Hale, and Hamilton. Examples of transporting black children to increase integration include the mandatory assignment of black Open District high school students to Pasadena and Blair High Schools and the assignment of Audubon and Franklin Junior High School students to Marshall. (Govt. Exs. 1, 11-S, 58-A, 58-B, 59-A, 59-B, 59-C, Tr. pp. 882, 886-890)

C. Residential Segregation.

24. The record demonstrates the existence of a high degree of residential segregation in the geographic areas the District serves. Linda Vista and San Rafael on the west and the Arroyo Seco and Allendale areas at the southern edge of the District have no or almost no black residents. The same is true of all of

Sierra Madre and of the portions of Pasadena and Altadena east of Holliston Avenue. The District has been divided for administrative purposes into 92 roughly equal parts. Of those, 60 (including all 52 in the areas described above) have from zero to five percent Negro student residents. The areas with the highest percentage of black students lie between the Arroyo on the west, Los Robles and Santa Anita Avenues on the east, California Boulevard on the south, and Altadena Drive on the north. Of the 19 administrative zones in this area, one has over 95 percent Negro student population, six others are over 80 percent black, ten are 51-80 percent black, and two are 21-50 percent black. (Govt. Exs. 97 and 98)

25. The residential segregation described above is due in large measure to racial discrimination. Until 1948, the courts of the State of California enforced racially restrictive covenants. In 1939, Pasadena's Board of Realtors successfully campaigned actively and openly for the adoption and renewal of such covenants. In 1945, the Supreme Court of California acknowledged the commonplace use of restrictive covenants in Pasadena and the resulting "Negro district." The Board of Education obtained a deed to the Allendale school property in 1948 that referred to racially restrictive covenants. The Board has never assigned a black teacher to that school, and it has never had over two black students. (Govt. Exs. 1, 1-C, 3A-C, 4-C, 48, 49A-C, 50, Tr. pp. 592-599, 603, *Fairchild* v. *Raines*, 145 P. 2d 528 (1943))

From 1948 until at least 1968 it remained the practice of almost every Pasadena realtor to refuse to sell to Negroes in white residential areas. Pasadena realtors interpreted a provision of the realtors code of ethics forbidding the introduction of undesirable elements into a neighborhood, to make such sales unethical. Even those realtors who declined to be bound by such a gross misinterpretation of their ethical strictures felt compelled to honor the request of a client not to sell to Negroes. The handful of sales that were made to blacks in white areas

occasioned acts of intimidation and harassment on the part of private citizens. (Tr. pp. 604-614, 624-630, 648-653 and 673-677)

The passage of the Civil Rights Act of 1968 and the Supreme Court's opinion in *Jones* v. *Mayer*, 392 U. S. 409 (1968), have diminished the extent of racial discrimination in the sale and rental of housing in Pasadena. However, black persons continue to encounter difficulty in obtaining residences in east Pasadena. (Tr. pp. 558, 560-561, 639-640, 677, 680)

26. Defendants have been aware of the existence of residential segregation and the discrimination that underlies it. (Def. Ex. H-1, Tr. pp. 1608-1610)

D. The Adverse Consequences of Racial Segregation.

27. Racial integration provides positive educational benefits. One purpose of education is to prepare children for living in our society, which is a multiracial society. In addition, racial segregation imposes a badge of inferiority on minority students; integration is necessary to remove that badge. (Govt. Exs. 43, p. 27, 63, p. 21, and 64 pp. 41-42, Tr. pp. 334, 1735, 1870 and 2266)

E. The Existence of Feasible Methods of Overcoming Segregation.

28. The Government's expert witness, Dr. Gordon Foster, director of the Florida Desegregation Consulting Center, testified to the existence of two feasible integration plans for the District. One would involve integrating the student bodies of all schools in the District, while the other would involve most schools west of the Eaton Wash. He testified that in his opinion the District could implement the second plan by September, 1970 and Superintendent Ralph Hornbeck confirmed that the District could do so. The Court so finds. (Govt. Exs. 99A-D and 100 A-C, Tr. pp. 1122-1123 and 2285-2287)

IV. *Segregation of Faculty and Staff.*

A. Discrimination in the Assignment of Faculty and Staff Members.

29. There has never been a black teacher, administrator, or other certificated employee assigned to five of the elementary schools in the Pasadena District, Allendale, Linda Vista, Noyes, Sierra Madre and Sierra Mesa, and at another, San Rafael, one black teacher was assigned there for only one year. At a seventh, Willard, the first black teacher was assigned there for this school year. For the 1969-70 school year, there are only four black teachers assigned to the ten elementary schools located east of Allen Avenue. (Govt. Exs. 1-C, 3, 3-A, 3-B, 3-C, 4-C, and 6)

For every year for which figures are available, beginning in 1951, over 50 percent of the black certificated employees on the elementary level have been assigned to schools over 50 percent black. For the last three years over 80 percent of the black certificated employees at the elementary level were assigned to majority black schools, and for the 1969-70 school year only five of the 88 black certificated elementary school employees are assigned to the fifteen elementary schools at which black students comprise less than ten percent of the total enrollment. (Govt. Exs. 1, 1-C, 2, 3, 3-A, 3-B, 3-C, 4-C, and 5)

No black teachers, administrators or other certificated personnel were assigned to three of the five junior high schools in the Pasadena District until after the 1960-61 school year. One was assigned to Eliot Junior High School that year, and then in 1963-64 there was one assigned to Marshall and one to Wilson. For the last three years over half of the black certificated employees at the junior high school level have been assigned to Washington, which for that period has been over 75 percent black. There is still only one black teacher at Wilson Junior High School. (Govt. Exs. 1, 1-C, 3, 3-A, 3-B, 3-C, 4-C)

The District has never had a black principal at any school east of Lake Avenue. For the years which information is available, there has never been a black principal or assistant principal at any majority white elementary school. The only black principals or assistant principals at the elementary level since 1966-67 have been assigned to Franklin, Jackson, and Washington Elementary Schools, all schools with over 60 percent black enrollments. (Govt. Exs. 1, 1-C, 3-A, 3-B, 3-C, 4-C, 5, 95-A, 95-B)

The only black administrators at the junior high school level for the same four year period were at Washington Junior High and Eliot Junior High,[10] the two junior high schools with the highest black enrollment. One of these black administrators, Dr. Jesse Moses, principal at Washington Junior High School was transferred to Washington from McKinley Junior High School for the 1965-66 school year without his requesting the transfer, because the Board felt he would "provide good leadership for Washington," which at that time was 70 percent black. (Govt. Exs. 1, 1-C, 3, 3-A, 3-B, 3-C, 4-C, Tr. pp. 2066-2067)

30. The Pasadena District also consistently assigns black substitute teachers to majority black schools, and on the occasions that the black substitutes are assigned to majority white schools they are assigned to schools such as McKinley, Longfellow or Jefferson, rather than to schools such as Arroyo Seco, San Rafael, Sierra Madre or Sierra Mesa. The record shows that of the 619 days taught by black substitute teachers at the elementary level, 507½ (or 82 percent) of the days were spent in the eight most heavily black schools and only 18½ of the days were spent at the 13 schools that now have less than five percent black enrollment. (Govt. Exs. 1 and 9-A)

At the junior high school level, over 50 percent of the 433½ days taught by black substitute teachers were taught at Washington Junior High, the most heavily black junior high school. Similarly 130 of the 157 days taught by black substitute teachers

10. The black administrator at Eliot was there for the 1968-69 school year.

at the senior high school level were taught at Muir, the only minority white senior high school. (Govt. Exs. 1 and 9-A)

The District's assignment of black substitute teachers to black schools enables those substitute teachers who express a desire not to substitute at black schools to avoid doing so. An analysis of Govt. Ex. 9-B shows that the requests of substitute teachers who "don't like Negroes" or who express a desire to teach "on the east side" or "not to teach on the west side" are often granted. At the elementary level, the substitute teachers in Govt. Ex. 9-B who indicated a desire not to teach at majority black schools taught at majority white schools 85.8 percent of the time. (Govt. Exs. 1 and 9-B)

31. There is presently only one black nurse employed by the Pasadena District, of 27. At first she was assigned to Pasadena High School, but in August of 1965 Mrs. Banks received word that she had been transferred, without having submitted a request, from Pasadena High School to Cleveland and Franklin Elementary Schools, which were 90 and 68 percent black, respectively. At the time Mrs. Banks was not given an explanation for the transfer but was later told that she "could make a better contribution and would be an asset to the northwest community working in the two schools." She was replaced at Pasadena High School by a new, white nurse. (Govt. Exs. 1 and 7-A, Tr. pp. 868-872)

32. Another form of discriminatory teacher assignment in the District is one that relates not to the race of the teachers, but to the race of the students. That is the District's practice of assigning less well educated, less experienced and lower paid teachers to majority black schools more frequently than to majority white schools. For example, 28.3 percent of the teachers presently in the majority black elementary schools are probationary teachers with less than three years experience, while only 18.6 percent of the teachers in minority black elementary schools are classified as probationary teachers. Twenty of the sixty-one teachers (32.8 percent) at Washington Junior High

School are probationary, while at each of other junior high schools less than 25 percent of the teachers are probationary. (Govt. Exs. 1 and 31)

The average monthly salary at each of the thirteen elementary schools with enrollments less than 10 percent black is higher than the average monthly salary at any of the eight majority black elementary schools in the district. None of the majority white elementary schools has an average monthly salary as low as at any of the five most heavily black elementary schools. The average monthly salary at the thirteen schools with less than 10 percent black enrollment is almost 150 dollars more than that at the schools which have over 90 percent black enrollments. At the junior high school level, all but Washington Junior High School have average salaries over $1,000 a month. The average monthly salary at Washington, the only majority black junior high school is $968.88. (Govt. Exs. 1 and 31)

B. Discrimination in Hiring Teachers.

33. While 30 percent of the District's students are black, only ten percent of its faculty members are black. At the senior high school level, only 4.6 percent of the teachers are black. (Govt. Exs. 1-D and 3)

These figures are the result of six factors: active discrimination on the part of District personnel; assignment policies; unchecked veto power over hiring on the part of principals, department heads, and personnel officers; Pasadena's bad reputation among black persons for fair hiring practices; inadequate steps to overcome past discrimination; and a shortage of black teachers.

34. By 1958, the District had still hired only 13 black employees. In that year, Superintendent Jenkins came to Pasadena and gave instructions to improve the District's record. While the record did improve, to 122 in 1966-67, Dr. Jenkins' personnel officers continued actively to discriminate against

black applicants. (Govt. Exs. 3-A, 4-C, Tr. pp. 31-32, 87-88, 527, 568-569, 621, 786, 878-879, 885-886, 1953-1957)

Dr. Jenkins' successor, Dr. Salmon, also urged greater efforts to hire qualified black teachers. Again, his efforts were frustrated by personnel officers. (Govt. Exs. 1-C, 3, 3-A-3-C, Tr. pp. 291-295, 302-303, 1977-1978)

35. The District's policy and practice of assigning most black teachers to black schools leads directly to discrimination in hiring when the type of position a particular teacher seeks is open in white schools. No senior high school has a majority black enrollment. None has a faculty over eight percent black. (Govt. Exs. 1, 3, and 8-B)

36. Every principal and every district-wide department head has an absolute, unreviewed veto on applications for positions under their authority; the director of personnel and his chief assistant have absolute veto power over any applicant for any teaching position. There is no review of recordkeeping procedure for determining whether racial discrimination is a factor. The chief personnel officers have broad discretion to reject applicants without sending them on interviews and without making any record of reasons for rejection. Occasionally, personal intervention from the superintendent or other high District officials can reverse a rejection from the personnel department, but even such intervention has not always been successful. (Govt. Exs. 7-C, 8-B, 8-C, 42-A, pp. 19-27, 38, Tr. pp. 13-15, 65-66, 69, 89-95, 202-203, 291-295, 298-302, 837-841)

37. Defendants have been attempting to hire more black teachers. In the past year, 26 of the 150 teachers hired have been black and 19 have been of other minority racial or ethnic backgrounds. However, defendants have not used some readily available techniques for overcoming the effects of past discrimination. The District has never used black persons to recruit teachers. There has never been a black professional employee in the personnel department; there is now one black clerk among

eleven employees. The District has not written to placement offices at either predominantly white or predominantly Negro schools indicating its desire to hire qualified teachers without regard to race. (Govt. Exs. 42-A, pp. 35-36, 69, pp. 18, 22-23, Tr. p. 2268)

C. Discrimination in Hiring and Promoting Administrative Personnel.

38. The District has only two black principals, among a total of 37. The record discloses only one other black person who has been a principal. No black person has been a senior high school principal. Two of the senior high schools have each gained a black assistant principal, for the first time since 1968. There is one black assistant principal at the junior high school level, at Washington, and no black principal. There is no black assistant principal at an elementary school. The District has never had a black person at the level of superintendent or assistant superintendent or director of a department. For a period of three years, a black person was director of inter-group education and another black person was a consultant in intergroup education for two years. There has been one black consultant, in reading, for one year; no other consultant in any academic subject has been black. The District's record in the employment of black counselors has been fairly good since approximately 1965; although Mrs. Jeffalyn Johnson experienced difficulty, apparently because of a limit of one black counselor each at schools with large numbers of black students. According to Dr. Jenkins, one purpose of hiring black counselors was to provide training for those individuals to become assistant principals. None of the black counselors became an assistant principal, although numerous vacancies occurred. (Govt. Exs. 3-A-3-C, 4-A-4-C, 42-A, p. 55, 88-L, Tr. pp. 550-551, 556, 2068, 2072)

39. The Court heard testimony from three highly qualified black persons who left the District because of their frustration at being passed over repeatedly for appointments to administrative positions Ples Griffin, who is now Chief of the Bureau of Inter-

group Relations for the State Department of Education in Sacramento could not obtain a position as assistant principal in Pasadena. He was not notified of job openings for which he was qualified, although the District's formal procedures required that he be notified. Mrs. Minta Palmer, who is about to obtain a doctor's degree in education administration, left the District because she could not obtain that degree from the University of Southern California without administrative experience. Her principal at Madison Elementary School, Mr. Fink, advised her not to attempt to obtain administrative credentials, as he did not think there would be any opportunities for her to advance. She obtained the credentials, but found that Mr. Fink had been accurate in predicting her success; one job for which she was qualified was filled by a white person without her being notified of the vacancy. Other jobs she sought also went to white persons. Mr. Quentin Mason was a counselor, as Mr. Griffin had been. The personnel director advised him on one occasion that he was passed over because he had used abbreviations on a written examination. Dr. Mason had been advised of the examination the day he was to take it. He, like Griffin, tried for over three years to become an assistant principal before leaving to accept an administrative position elsewhere. Arthur Bias also encountered difficulty in being notified of job vacancies. When Mr. Bias learned of a head coaching job at Muir the principal told him he had already committed himself to giving the job to another, a white coach. Mr. Bias learned that a position at Blair had been open when the white replacement came to ask for help. (Govt. Ex. 42-A, pp. 28-31, Tr. pp. 726-731, 834-847, 962, 967-972, 1002, 1005-1008)

D. The Effect on Students of Discrimination in Hiring, Assignment, and Promotion.

40. Discrimination in the hiring, assignment, and promotion of black teachers and administrators adversely affects students of all races. Students need examples, in both teaching and admin-

istrative positions, of a multi-racial system. Black students need to see that equal opportunities for black teachers exist in order to believe that equal opportunities for black students exist. Additionally, black teachers will have better morale, and therefore do a better job teaching all students if they believe there is equal opportunity for placement and advancement. (Tr. pp. 303, 1066-1069)

V. *Construction.*

41. Defendants' plans at the time of trial for the construction and rehabilitation of elementary schools, if implemented, will intensify segregation in the District. Particularly, the construction of a new, six-classroom building at the old Arroyo Seco School site would lead to the creation of another white school. Even the construction of a school large enough to accommodate Arroyo Seco and Garfield students, another plan the Board is considering, would result in an abnormally small school, which would do little to relieve segregation of black students (it would have approximately 350 students, 50 of whom would be black). A school with larger capacity would contribute more to integration, but would be unnecessary if the District builds a school of adequate size at Linda Vista. (Govt. Exs. 1; 42-B, Ex. 23-C; and 70, Exs. 2-A and 3)

Defendants presently plan to rehabilitate the Linda Vista Elementary School at its former size, thus leaving it at a capacity of 255 students. At this capacity and at its present location the Linda Vista Elementary School has never enrolled more than 13 black students in any school for which records are in evidence. (Govt. Exs. 1; 14, 42B, Ex. 23C; and 70, Ex. 3)

42. Defendants' plan at the time of trial for desegregation of the junior high schools would, if implemented, impose burdens on black students to a greater extent than on white students. Defendants plan to close Washington Junior High School, principally because, "It is impossible without a great deal of bussing to create any kind of integration at that particular

school." This is a non sequitur, as closing Washington would require transportation of all the students normally assigned to that school. Dr. Foster presented a suggestion for an attendance area for Washington that would involve little, if any, additional transportation. What defendants oppose is transporting white pupils to school in a black neighborhood. (Govt. Exs. 1, 10-F, 99-C, 100-B; Def. Ex. W; Tr. pp. 647 and 1863)

43. Defendants have constructed new schools and built additions to existing schools in a manner that has contributed to the racial identifiability of schools in the District.

For example, in 1934 defendants constructed the Cleveland Elementary School on a 2.7 acre site at a capacity of 230 students. The school opened with a high percentage of minority students. Approximately one mile away, defendants maintained Linda Vista Elementary School on a five-acre site at a capacity of 255 students. In 1946-47, the first year ethnic enrollment statistics are available, the enrollment at Cleveland Elementary School was nine Caucasian students, 128 black students and 66 other students. The enrollment at the Linda Vista School during that school year was 170 students, all white. The combined enrollments of these two schools was 373, well below the optimum school size of 600 students which defendants state as their standard for minimum school capacity. (Govt. Exs. 1; 14; 27, p. 44; 68, Exs. 7 and 12; 70, Exs. 2A-2D; and 91)

Between 1956 and 1962 defendants increased the Cleveland Elementary School site from 2.7 acres to 3.9 acres. In 1962 defendants built a ten classroom addition to the Cleveland Elementary School. During the 1962-63 school year the Cleveland School had an enrollment of five Caucasian students, 432 black students, and 48 other students, while the adjoining Linda Vista School had an enrollment of 267 Caucasian students, no black students, and four other students. (Govt. Exs. 1; 14; 68-A, Ex. 12; 70, Ex. 2A; and 88-B)

In 1949, at a time when Caucasian students from the adjoining Garfield Elementary School attendance area were

attending Arroyo Seco Elementary School by virtue of the existence of neutral zones, defendants built a one room addition to the Arroyo Seco School. During the 1948-49 school year, the year previous to the addition, Arroyo Seco had capacity for 205 students and a total enrollment of 228 students consisting of 223 Caucasian students, no black students and five other students. During that same year Garfield was under-enrolled, with capacity for 385 students and a total student enrollment of 284 students consisting of 34 Caucasian students, 114 black students and 136 other students. (Govt. Exs. 1; 10-A; 11-L; 14; 70; Ex. 2A; and 88A)

In 1954 defendants constructed a three classroom addition to the Allendale Elementary School. During the 1953-54 school year, the year previous to the addition, the Allendale Elementary School had capacity for 290 students and a total enrollment of 308 consisting of 290 Caucasian students, no black students and 18 other students. The Garfield Elementary School, whose attendance area adjoins that of the Allendale Elementary School was under-enrolled during that same school year with a capacity of 385 students and a total enrollment of 305 students consisting of 37 Caucasian students, 153 black students and 115 other students. (Govt. Exs. 1; 14; 49-A; 49-B; and 70, Ex. 2A; Tr. pp. 599-602)

Defendants maintain that the appropriate capacity of an elementary school should be 600 students. Nevertheless, defendants have constructed and maintained Arroyo Seco Elementary School, Linda Vista Elementary School, and Noyes Elementary School with 11 or fewer classrooms, and capacities of less than 350, and with student enrollments over 90 percent white. Until 1962 defendants maintained the Cleveland Elementary School at a size of eight classrooms with a predominantly black student enrollment. (Govt. Exs. 1; 27, p. 44; and 70, Exs. 2A-2D)

44. Defendants have placed transportable classrooms at Negro schools to accommodate over-enrollment at those schools

while adjoining white schools had either fewer transportables or no transportables in the same school years.

Each year since 1961-62, Washington Elementary School has had at least three, and since 1966 at least ten, transportable classrooms on its grounds. The two majority white schools with adjacent attendance areas, Altadena and Longfellow, had no transportables from 1961-62 until 1969-70, when Longfellow received three (Washington has ten; Altadena has none). Similarly, predominantly black Cleveland School had transportables from 1960 until its addition opened in 1963, and predominantly black Jackson has had transportables every year since 1960 (six each year since 1964). Nearby, white Linda Vista had no transportables until 1969, when structural deficiencies required the use of four transportables. Linda Vista has the lowest pupil load, per site acre of any school in the District, with the exception of Noyes. A comparable situation has existed with Madison School, now 64 percent black, having between two and nine transportables each year since 1960. Nearby McKinley (11 percent black this year) has had no transportables, while Jefferson (six percent black) had none until 1964, and then only one year year until 1969-70, when it added 14 transportables due to structural difficulties with the main building. (Govt. Exs. 1; 10-F; 13-C; 14; and 70, Exs. 2-A through 2-D)

45. Defendants have maintained schools with student enrollment that are minority Caucasian under capacity while adjoining schools that are predominantly Caucasian are over-enrolled.

Since 1961-62 predominantly white Allendale Elementary School had been maintained over capacity. Garfield Elementary School, whose attendance area adjoins the attendance zone of the Allendale School has been under-enrolled in each school year since the 1961-62 school year. Defendants have failed to fill vacancies at Garfield with Caucasian students from Allendale. (Govt. Exs. 1, 10-F, 14, and 70, Exs. 2A-2B)

Defendants are currently maintaining Washington Junior High School, predominantly black in enrollment, at an enrollment level that is under the school's capacity by approximately 94 students. Defendants also maintain predominantly Caucasian Marshall Junior High School, whose attendance area adjoins Washington Junior High School's attendance zone, at over-capacity by approximately 90 students. Defendants have failed to assign white students attending Marshall to fill the vacancies existing at Washington Junior High School. (Govt. Exs. 1, 10-J, and 42B, Ex. 25)

During each year for which records are in evidence (1961-62 to the present) defendants have operated Pasadena High School over its capacity, while Muir High School has in each of those years been under-enrolled (Govt. Exs. 1; 42-B, Exs. 23-A, 23-B, 23-F, and 23-H). (Govt. Exs. 1; 11-H; 42B, Exs. 25; 68-A, Exs. 12; 70, Ex. 2-C)

VI. *Interclass Grouping.*

46. The District has two systems of grouping students that are in general use. At the elementary level, students identified as gifted are placed in classes with children who test at average to superior achievement levels, while students identified as below average academically are placed together with average and above average achievers. At the secondary level, students are grouped in "fast," "regular," and "slow" classes in English, social studies, science, and mathematics. (Govt. Exs. 27, pp. 7, 8; 29; 30; 33-A and 33-B; Tr. p. 1700)

In 1969, officials of the District began to permit variations in types of grouping. Three elementary schools have no groupings, and five of the secondary schools have begun to experiment with neterogeneous grouping procedures in some subjects. (Govt. Exs. 27, pp. 15, 16; and 53; Tr. p. 1838)

47. The racial effect of the grouping procedures generally in use in the District is to increase segregation. At every second-

ary school, a higher percentage of black than white students is in slow classes in every subject matter, and a higher percentage of white than black students is in fast classes. At some schools, the segregation is extensive. At McKinley Junior High School, for example, 52 percent of the white children in science are in fast classes, while two percent are in slow classes; 31 percent of the black children in science are in slow classes and one percent are in fast classes. Even in social studies the segregation is pronounced; 48 percent of the white children and five percent of the black children are in fast classes; 38 percent of the black children and six percent of the white children are in slow classes. Even at the elementary level, where the grouping procedures are most flexible, the racial effects are pronounced. Seventy-five percent of the white students attend classes with gifted students, while 60 percent of the black students do not. (Govt. Exs. 27, p. 32; 53 and 54)

48. The racial segregation that exists within integrated schools as a result of interclass grouping doubtless has numerous causes, not all of which are treated in the record. Three causes do not appear in the record, each of which involves elements of racial discrimination. One is that grouping assignments are based in part on scores obtained on achievement and "intelligence" tests. As the District's assistant superintendent for elementaray education acknowledged, such tests are racially discriminatory, based as they are primarily on verbal achievement. Another factor is that grouping assignments are based in part on teacher and counselor recommendations. The evidence shows that at least at some schools there is a tendency among some counselors and other school personnel to assume that Negro students, particularly Negroes of poor socio-economic backgrounds, will achieve poorly and to make low assignments accordingly. A third factor is that it is the District's policy, at least in elementary schools, to make higher placements than would otherwise be made simply because a parent requests higher placement. This policy favors children of assertive parents. In Pasadena, at least, white parents as a group tend to be more assertive than black parents. (Govt. Exs. 27, pp. 9, 10, 12, 16, 21, 22; Tr. pp. 96, 97, 117, 118, 516-520, 537, 541, 553, 554, 1076-1078, 1658-1661)

VII. *Transfers.*

49. Defendants have granted transfers that they knew or should have known were wholly or at least in part motivated by racial considerations, including baseless transfers that had the effect of intensifying racial segregation in the Pasadena schools.

50. Mr. Rex Ratcliffe filled out a transfer application stating in the black labeled "(S)school pupil desires to attend," the statement, "(A)ny where colored population is not in majority." He lives in the Washington zone. Although the principal of Longfellow Elementary School recommended that the transfer not be granted, defendants nevertheless granted Mr. Ratcliffe's two children transfers from Washington Elementary School to Longfellow Elementary School. (Govt. Exs. 1, 76-A and Supp.)

Mr. and Mrs. Wayne Stone filled out an application for their daughter Beverly to transfer from predominantly black Washington Junior High School to predominantly Caucasian Marshall Junior High School. As reason, they stated in part, "Please do not tell us that because of ethnic balance she cannot have a permit. I'm (we) sure one child is not going to make any difference. Would you send yours there under present conditions?" Defendants granted Beverly Stone the transfer. (Govt. Exs. 1 and 76-B)

Defendants have granted numerous transfer permits to white students to leave Washington Junior High School on the basis of fear or fights or the alleged bad condition of the school. (Govt. Exs. 80-A, 80-B, and 80-C)

51. The record reflects that the most frequently abused types of transfers are those for child care at the elementary level and for student's change of residence at the secondary level. (See Govt. Exs. 1; 67, Exs. 4 and 5; 78; 79-A; and 79-C, Tr. pp. 934, 948-950, 1033, and 1728-1729)

52. In addition, defendants have granted "hardship" and other miscellaneous transfers that had obvious racial effects, such as a "hardship" transfer to Marshall based chiefly on the fact a forceful father had enrolled his son there without a transfer. Another "hardship" transfer, to Longfellow, was "emphatically" opposed by the receiving principal, but granted by the assistant superintendent, in part because "all children in the area go to Longfellow." Another student who had enrolled without a permit at a white school outside his zone, Pasadena High School, was permitted to stay to take photography at Pasadena, Muir, the school serving his residence, has a photography course. (Govt. Exs. 1; 67, Ex. 10; 77; 79-B; Tr. pp. 937-945, 1527, and 1848)

53. Defendants adopted a policy of open transfers on July 30, 1968, whereby a student can transfer from the school of his normal attendance area if the transfer will improve ethnic balance in both the sending and receiving schools. However, such transfers are granted only to schools where space is declared available. Only four elementary schools meet these criteria. Three of these schools are in the far eastern portion of Pasadena —Don Benito Elementary School, Field Elementary School and Willard Elementary School—and are not easily accessible to the black students residing in the western portion of the city. To obtain a transfer to one of those schools, a child must provide his own transportation. The fourth receiving school is Cleveland Elementary School which has a 97.4 percent black student enrollment.

While permitting ethnic balance transfers only to schools at the edges of the District, defendants have permitted other intra-district transfers to such schools as Altadena, Longfellow and Jefferson. In fact, those three schools alone received a total of 140 transfer students in 1969-70. (Govt. Exs. 1; 10-F; 14, 35; 42B, Ex. 31)

54. The Court finds that although there have been abuses of the school district's transfer policies no injunction concerning transfers is necessary at this time, because of the integration to be required by commencement of the 1970-71 school year.

Conclusions of Law.

I.

Original Conclusions.

1. In *Brown* v. *Board of Education*, 347 U. S. 483 (1954), the Supreme Court was dealing, simply, with racial segregation. The Court made no distinction as to Northern segregation or Southern segregation. The Supreme Court held, simply, that segregated education is inherently unequal that it deprived Negro children of the educational opportunity to fulfill all their dreams in this country. It further held that all children are deprived, in a constitutional sense, by segregation.

2. Under the facts of this case, use of a strict neighborhood school policy and a policy against cross-town bussing take on constitutional significance as a violation of the Fourteenth Amendment to the Constitution of the United States.

II.

Supplementary Conclusions.

3. This court has jurisdiction of this action under 23 U. S. C. Sections 1343 and 1345.

4. Pursuant to the Fourteenth Amendment, and Title IV of the Civil Rights Act of 1964, this court had jurisdiction to hear and to decide all issues concerning alleged racial discrimination in public education in the Pasadena Unified School District, including policies with respect to assignments and transfers of students, the allocation of faculty and staff, and the location and construction of schools. *United States* v. *School District 151*, 286 F. Supp. 786 (N. D., Ill., 1968), *affirmed*, 404 F. 2d 1125 (C. A. 7, 1968), *United States* v. *Jefferson County Board of Education*, 372 F. 2d 836 (C. A. 5, 1966), *affirmed en banc*, 380 F. 2d 385 (C. A. 5, 1967), *cert. denied*, 389 U. S. 840

(1967); *Lee* v. *Macon County Board of Education*, 267 F. Supp. 458 (M. D. Ala., 1967), *affirmed*, 389 U. S. 215 (1967).

5. The chief significance of *Brown* is its holding that racially segregated public education is detrimental to school children, 347 U. S. at 494. See *United States* v. *Jefferson county Board of Education*, 372 F. 2d 836, 846, and 868 (C. A. 5, 1966). For the reason under the Fourteenth Amendment a public school body has an obligation to act affirmatively to promote integration, consistent with the principles of educational soundness and administrative feasibility.

6. A violation of the Fourteenth Amendment has occurred when public school officials have made a series of educational policy decisions which were based wholly or in part on considerations of the race of students or teachers and which have contributed to increasing racial segregation in the public school system. *Poindexter* v. *Louisiana Financial Assistance Commission*, 275 F. Spup. 833, 837 *et. seq.* (E. D. La., 1967), *affirmed*, 389 U. S. 571 (1968); *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649, 652, (E. D. La., 1961), *affirmed*, 368 U. S. 515 (1962); *United States* v. *School District 151, supra*, 404 F. 2d at 1134; *Taylor* v. *Board of Education*, 191 F. Supp. 181 (S. D. N. Y., 1961), *affirmed*, 294 F. 2d 36 (C. A. 2, 1961) *cert. denied*, 368 U. S. 940 (1961); *Griffin* v. *County School Board*, 377 U. S. 218, 231 (1964).

7. When school officials consistently draw attendance lines so as to increase racial segregation, the presumption arises that they have done so to promote racial segregation of students, in violation of the Constitution. *United States* v. *School District 151*, 286 F. Supp. at 798.

8. School officials have an obligation to correct the effects of improperly drawn attendance zones. *Taylor* v. *Board of Education*, 294 F. 2d 36 (C. A. 2, 1961); c.f. *Gomillion* v. *Lightfoot*, 364 U. S. 399 (1960).

9. A school board may not, consistently with the law and the Fourteenth Amendment, use a neighborhood school policy

as a mask to perpetuate racial discrimination. *Board of Education* v. *Dowell*, 375 F. 2d 158, 166 (C. A. 10, 1967) *cert. denied*, 387 U. S. 931 (1967); *United States* v. *School District 151*, 286 F. Supp. at 798.

10. School boards may not build upon residential segregation, when that segregation is the result of either private or state enforced discrimination. *Brewer* v. *School Board of City of Norfolk*, 397 F. 2d 37, 41-42 (C. A. 4, 1968). Defendants have a duty to attempt to overcome the effects of residential segregation on student assignments. "Assignment of pupils to neighborhood schools is a sound concept, but it cannot be approved if residence in a neighborhood is denied to Negro pupils solely on the grounds of color." *Id* at 42; *United States* v. *School District 151*, 286 F. 2d at 798. See also, *Green* v. *County School Board*, 391 U. S. at 442.

11. The existence of residential segregation based upon discrimination may be inferred from evidence of the existence and enforcement by courts in the past of racially restrictive covenants. It may be inferred from testimony that there are significant areas of a community in which black persons do not and have not resided. It may be inferred from testimony that realtors have not sold, or have been reluctant to sell, houses in certain areas of the community to Negroes. *Dowell* v. *Board of Education of Oklahoma City*, 244 F. 2d 971, 980 (W. D. Okla. 1965), *affirmed*, 375 F. 2d 158 (C. A. 10, 1967).

12. When from the evidence it appears that racial discrimination has led to residential segregation and that the residential segregation is reflected in school enrollment figures, school officials have the burden to show that there are no educationally sound and administratively feasible alternatives available to overcome the existence of segregated schools. *United States* v. *School District 151*, 286 F. 2d at 798.

13. When school officials have located new schools and constructed additions to old schools, and failed to adjust school enrollments to fit school capacities, in such a way as to intensify

racial segregation, they have the affirmative duty "to *seek* means to eradicate" the results of their discriminatory acts. *United States* v. *Board of Public Instruction of Polk County, Florida,* 395 F. 2d 66, 69 (C. A. 5, 1968) (emphasis in original); *Lee* v. *Macon County Board of Education,* 267 F. Supp. 458, 472, and 480 (M. D. Ala. 1967).

14. Defendants' desegregation plans based primarily on the choice of students and their parents have been inadequate to meet defendants' Fourteenth Amendment obligations, as more effective methods of reducing segregation in both majority black and majority white schools have been available, *Green* v. *County Board of Education, supra; Adams* v. *Matthews,* 403 F. 2d 181, 189 (C. A. 5, 1968).

15. Recruitment and assignment of public school faculty and professional staff personnel, including classroom teachers, principals, and substitute teachers, on a racial basis, so as to establish schools that are racially identifiable by the composition of their faculties, deprive students of the right to be free of racial discrimination in the operation of public schools, in violation of the Fourteenth Amendment. *Rogers* v. *Paul,* 382 U. S. 198 (1965); *Bradley* v. *School Board of City of Richmond,* 382 U. S. 103 (1965); *Green* v. *County School Board,* 391 U. S. 430, 435. "Teachers and other professional staff members may not be discriminatorily assigned, dismissed, demoted, or passed over for retention, promotion or rehiring, on the grounds of race or color." *Stell* v. *Board of Education for City of Savannah,* 387 F. 2d 486, 497 (C. A. 5, 1967).

16. Discrimination on the basis of race in the hiring of public school faculty and professional staff personnel deprives students of the right to be free of racial discrimination in the operation of public schools, in violation of the Fourteenth Amendment. *United States* v. *Jefferson County Board of Education,* 372 F. 2d, 836, 893 (C. A. 5, 1966). "It is essential that school officials (1) cease practicing racial discrimination in the hiring and

assignment of *new* faculty members, and (2) take affirmative programmatic steps to correct existing effects of past racial assignments." *Id.,* (emphasis in original).

17. The defendants' present obligation, in order to overcome the effects of prior discrimination, is to allocate faculty and professional staff members so that no school is identifiable, by the racial composition of its faculty, as being tailored for a heavy concentration of black or white students. *United States* v. *Montgomery County Board of Education,* 395 U. S. 225, (1969); *United States* v. *Jefferson County Board of Education,* 380 F. 2d 385, 394 (C. A. 5, 1967); *Brewer* v. *City of Norfolk School Board,* 397 F. 2d 37, 39 (C. A. 4, 1968).

18. It the responsibility for faculty and staff desegregation is that of the defendants, not the teachers, and the achievement of the required objective may not be made contingent upon the willingness of teachers voluntarily to transfer from their present schools. If necessary, faculty and professional staff members shall be assigned or reassigned to schools in order to comply with this requirement. *United States* v. *Board of Education of City of Bessemer,* 396 F. 2d 44, 50-51 (C. A. 5, 1968); *Davis* v. *Board of School Commissioners of Mobile County,* 393 F. 2d 690, 695, 697, 698 (C. A. 5, 1968); *United States* v. *Greenwood Municipal Separate School District; supra at* 1093-94; *Monroe* v. *Commissioners of City of Jackson,* 380 F. 2d 955, 960 (C. A. 6, 1967), rev's on other grounds, 391 U. S. 450 (1968); *Kelley* v. *Altheimer,* 378 F. 2d 483, 498-99 (C. A. 8, 1967).

19. A school board may not, consistently with the Fourteenth Amendment, maintain segregated schools because of, or permit educational choices to be influenced by a policy of racial segregation in order to accommodate, community sentiment or the wishes of a majority of voters. *Cooper* v. *Aaron,* 358 U. S. 1, 12-13, 15-16 (1968); *Lucas* v. *Forty-Fourth General Assembly of State of Colorado,* 377 U. S. 713, 736-737 (1964); *Hall* v. *St. Helena Parish School Board,* 197 F. Supp. 649, 659,

(E. D. La. 1961), *affirmed*, 368 U. S. 515 (1961); *Reitman* v. *Mulkey*, 387 U. S. 369 (1967); *Monroe* v. *Board of Commissioners*, 391 U S. 450, 459 (1968); *United States* v. *School District 151*, 286 F. Supp. at 798.

20. The present constitutional obligation of school authorities who have caused and intensified racial segregation in a school system, in violation of the Fourteenth Amendment "is to come forward with a plan (of desegregation) that promises realistically to work, and promises realistically to work *now*." *Green* v. *County School Board*, 391 U. S. at 439. The right to an equal educational opportunity is of "paramount importance," and delays in vindicating that right are intolerable. *Alexander* v. *Holves County Board of Education*, 396 U. S. 19, 20 (1969); *Carter* v. *West Feliciana Parish School Board*, No. 944, Supreme Court, January 20, 1970.

21. School officials are obliged under the Fourteenth Amendment to attempt to make an equitable distribution of the teachers and administrators with experience and advanced training. By assigning teachers with less experience and training to schools with predominantly black enrollments defendants have denied equal protection of the laws to students in those schools. *Kelley* v. *Altheimer*, 378 F. 2d 483, 499 (C. A. 8, 1967).

22. That provision of 42 U. S. C. Sec. 2000c-6 relating to the power of courts and officials to require transportation of pupils to overcome racial imbalance in public schools must be construed to relate to so-called de facto or adventitious segregation. It is inapplicable in this case where the existing segregation of pupils and teachers is inseparable from the discriminatory practices and policies of the defendants. *United States* v. *Jefferson County Board of Education*, 372 F. 2d 836, 878-86 (C. A. 5, 1966); *United States* v. *School District 151*, 404 F. 2d 1125, 1130-32 (C. A. 7, 1968).

23. By requiring that students from two majority black residential areas, the Open District and the Audubon area, be transported to achieve integration, while not transporting children from majority white residential areas to achieve integration, defendants have placed an undue share of the burdens of desegregation on black children and, thus, have violated the Fourteenth Amendment. C.f. *Brice* v. *Landis*, No. 51805, N. D. Cal., August 8, 1969; *Quarles* v. *Oxford Municipal Separate School District*, C. A. No. WC6962-K, January 7, 1970.

Dated: This 12th day of March, 1970.

/s/ MANUEL L. REAL,
United States District Judge.

STIPULATION AND ORDER.

Filed and Entered 31 August 1970.

WHEREAS the Court on March 10, 1970, approved the Plan for integration of the Pasadena Unified School District as amended and modified and filed on March 2, 1970; and

WHEREAS the Court retained jurisdiction of this cause in order to continue to observe and evaluate the plans and the execution of the plans of the Pasadena Unified School District in regard to the hiring, promotion, and assignment of teachers and professional staff members, the construction and location of facilities, and the assignment of students; and

WHEREAS the defendant Board of Education on May 15, 1970, approved, subject to Court approval, an Alternative Plan for reorganization of the senior high schools of the District, grades nine through twelve, which Alternative Plan is contained in the memorandum attached to the affidavit of Ralph W. Hornbeck filed concurrently herewith and the same is incorporated herein by reference; and

WHEREAS the Alternative Plan provides a more effective educational plan by including students in the 9th grade with those of the 10th, 11th and 12th grades on the present high school campuses, with the Marshall campus serving as an adjunct campus to Pasadena High School; and

WHEREAS the Alternative Plan provides for a better ethnic distribution and avoids certain additional expenditures which would arise if the 9th grade was housed on separate campus;

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto through their respective attorneys of record:

That the Alternative Plan is in conformance with the Judgment entered herein January 28, 1970, and, subject to the

approval of the above Court, this Alternative Plan should be implemented.

Dated: August 20, 1970.

ALBERT C. LUM AND BOYKO AND SIMMONS,
By /s/ MICHAEL W. ROBERTS,
Michael W. Roberts,
Attorney for Plaintiff.

Dated: August 20, 1970.

JOHN N. MITCHELL,
Attorney General,
JERRIS LEONARD,
Assistant Attorney General,
ROBERT L. MEYER,
United States Attorney,
JAMES STOTTER, II,
Assistant United States Attorney.
By /s/ JAMES STOTTER, II,
James Stotter, II,
Attorneys for Plaintiff-Intervenor.

Dated: August 20, 1970.

POLLOCK, PALMER & METZLER,
JOHN P. POLLOCK,
JOHN ANDREW MILLER,
By /s/ JOHN P. POLLOCK,
John P. Pollock,
Attorneys for Defendants.

Dated: August 20, 1970.

JOHN D. MAHARG,
County Counsel.
JAMES W. BRIGGS,
Assistant County Counsel,
ELAINE M. GRILLO,
Deputy County Counsel,
By /s/ ELAINE M. GRILLO,
Elaine M. Grillo,
Attorneys for Defendants.

ORDER.

Good cause appearing therefore, it is ordered, that the Alternative Plan for the reorganization of the senior high schools of the Pasadena Unified School District, grades nine through twelve, is approved and the same shall be implemented.

Dated: August 31, 1970.

/s/ MANUEL L. REAL,
Manuel L. Real,
United States District Judge.

1970 EXHIBITS

EXHIBIT 1-C

Pasadena Unified School District
Racial and Ethnic Distribution of Enrollment

May 1962, February 1963, February 1964, February 1965, January 1966, October 1966, October 1967, and October 1968

Research Report 274A

Department of Research
Pasadena Unified School District

October 1968

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ELEMENTARY	WHITE				NONWHITE								TOTAL
	Spanish Surname		Other White		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
ALLENDALE													
Pupils - 1966	50	11.0	396	87.2	0	--	7	1.6	0	--	1	0.2	454
1967	64	13.6	392	83.4	0	--	11	2.3	0	--	3	0.7	470
1968	65	13.6	391	82.0	0	--	16	3.4	1	0.2	4	0.8	477
Teachers	0		15		0		0		0		0		15
Administrators	0		1		0		0		0		0		1
Other Instr.*	0		0		0		0		0		0		0
ALTADENA													
Pupils - 1966	43	5.6	659	76.4	116	13.5	17	2.0	0	--	22	2.5	862
1967	46	5.4	635	74.6	148	17.4	16	1.9	0	--	6	0.7	851
1968	56	6.6	571	66.7	197	23.0	26	3.0	0	--	6	0.7	856
Teachers	0		23		3		0		0		0		26
Administrators	0		2		0		0		0		0		2
Other Instr.	0		1		0		0		0		0		1
ARROYO SECO													
Pupils - 1966	2	1.2	163	98.8	0	--	0	--	0	--	0	--	165
1967	7	5.0	133	95.0	0	--	0	--	0	--	0	--	140
1968	12	8.5	120	84.5	10	7.0	0	--	0	--	0	--	142
Teachers	0		6		0		0		0		0		6
Administrators	0		0		0		0		0		0		**
Other Instr.	0		0		0		0		0		0		0
AUDUBON													
Pupils - 1966	50	8.6	280	48.1	218	37.5	29	5.0	0	--	5	0.8	582
1967	44	7.4	215	36.0	304	50.9	29	4.9	0	--	5	0.8	597
1968	43	7.1	157	25.9	375	61.9	25	4.1	0	--	6	1.0	606
Teachers	0		18		2		0		0		0		20
Administrators	0		1		0		0		0		0		1
Other Instr.	0		0		1		0		0		0		1
BURBANK													
Pupils - 1966	1	0.2	536	97.4	11	2.0	2	0.4	0	--	0	--	550
1967	16	2.8	537	94.7	10	1.7	2	0.4	2	0.4	0	--	567
1968	24	4.4	504	92.6	9	1.7	6	1.1	1	0.2	0	--	544
Teachers	0		16		0		2		0		0		18
Administrators	0		1		0		0		0		0		1
Other Instr.	0		0		0		0		0		0		0
CLEVELAND													
Pupils - 1966	12	2.3	10	1.9	491	94.4	7	1.4	0	--	0	--	520
1967	17	3.2	30	5.7	472	89.6	6	1.1	0	--	2	0.4	527
1968	15	2.9	9	1.7	479	93.4	6	1.2	0	--	4	0.8	513
Teachers	0		11		7		1		0		0		19
Administrators	0		1		0		0		0		0		1
Other Instr.	0		2		0		0		0		0		2

* Abbreviation for Instructional Staff. Does not include nurses this year. Last year, the term "Other Certificated" included nurses.

** Principal at Garfield has administrative responsibilities for Arroyo Seco School.

ELEMENTARY	WHITE				NONWHITE								TOTAL
	Spanish Surname		Other White		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
DON BENITO													
Pupils - 1966	6	1.0	571	93.6	24	3.9	8	1.3	0	--	1	0.2	610
1967	6	1.1	539	96.8	3	0.5	9	1.6	0	--	0	--	557
1968	10	1.8	524	96.1	3	0.6	8	1.5	0	—	0	--	545
Teachers	0		17		0		0		0		0		17
Administrators	0		1		0		0		0		0		1
Other Instr.	0		0		0		0		0		0		0
EDISON													
Pupils - 1966	40	5.6	334	46.5	328	45.7	15	2.1	0	--	1	0.1	718
1967	43	6.6	242	37.0	339	51.8	27	4.1	0	--	3	0.5	654
1968	49	8.1	200	33.0	322	53.1	21	3.5	4	0.7	10	1.6	606
Teachers	0		18		1		1		0		0		20
Administrators	0		1		0		0		0		0		1
Other Instr.	0		0		0		0		0		0		0
FIELD													
Pupils - 1966	43	7.2	548	91.3	6	1.0	3	0.5	0	—	0	--	600
1967	34	6.0	528	92.8	2	0.3	5	0.9	0	--	0	--	569
1968	62	11.2	484	87.7	0	—	6	1.1	0	--	0	—	552
Teachers	0		16		0		1		0		0		17
Administrators	0		1		0		0		0		0		1
Other Instr.	0		0		0		0		0		0		0
FRANKLIN													
Pupils - 1966	47	7.9	83	13.9	438	73.2	24	4.0	2	0.3	4	0.7	598
1967	43	6.6	66	10.1	522	79.8	18	2.7	3	0.5	2	0.3	654
1968	37	6.3	57	9.6	475	80.5	14	2.4	3	0.5	4	0.7	590
Teachers	0		13		8		1		0		0		22
Administrators	0		0		1		0		0		0		1
Other Instr.	0		0		1		0		0		0		1
GARFIELD													
Pupils - 1966	104	30.3	90	26.2	125	36.4	18	5.3	4	1.2	2	0.6	343
1967	103	31.9	86	26.7	114	35.3	12	3.7	4	1.2	4	1.2	323
1968	104	36.8	85	30.0	81	28.6	10	3.5	3	1.1	0	--	283
Teachers	1		7		2		0		0		0		10
Administrators	0		1		0		0		0		0		1
Other Instr.	0		2		0		0		0		0		2
HALE													
Pupils - 1966	21	4.2	444	87.9	25	4.9	8	1.6	0	—	7	1.4	505
1967	24	5.0	429	89.0	13	2.7	6	1.2	0	—	10	2.1	482
1968	29	6.0	415	86.5	12	2.5	7	1.5	0	--	17	3.5	480
Teachers	0		17		0		0		0		0		17
Administrators	0		1		0		0		0		0		1
Other Instr.	0		0		0		0		0		0		0

ELEMENTARY	WHITE				NONWHITE								TOTAL
	Spanish Surname		Other White		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
HAMILTON													
Pupils - 1966	59	9.2	543	84.3	1	0.2	13	2.0	0	—	28	4.3	644
1967	69	10.9	533	84.2	2	0.3	19	3.0	0	--	10	1.6	633
1968	100	15.8	495	78.1	3	0.5	18	2.8	0	—	18	2.8	634
Teachers	0		18		1		0		0		0		19
Administrators	0		1		0		0		0		0		1
Other Instr.	0		1		0		0		0		0		1
JACKSON													
Pupils - 1966	51	6.5	63	8.1	532	68.2	130	16.7	0	—	4	0.5	780
1967	38	5.3	43	6.0	537	74.5	101	14.0	1	0.1	1	0.1	721
1968	30	4.3	42	6.0	548	78.3	77	11.0	0	—	3	0.4	700
Teachers	0		18		5		0		0		0		23
Administrators	1		0		1		0		0		0		2
Other Instr.	0		1		1		0		0		0		2
JEFFERSON													
Pupils - 1966	121	13.8	674	76.9	34	3.9	12	1.4	0	—	35	4.0	876
1967	141	17.2	596	72.8	40	4.9	19	2.3	0	—	23	2.8	819
1968	145	18.4	556	70.5	36	4.6	26	3.3	0	—	25	3.2	788
Teachers	0		27		1		0		0		0		28
Administrators	0		1		0		0		0		0		1
Other Instr.	0		0		0		0		0		0		0
LINCOLN													
Pupils - 1966	133	13.8	41	4.2	760	78.7	26	2.7	0	—	6	0.6	966
1967	81	8.9	42	4.6	768	84.3	19	2.1	0	--	1	0.1	911
1968	79	9.0	46	5.2	738	83.7	15	1.7	1	0.1	3	0.3	882
Teachers	0		12		13		4		0		0		29
Administrators	0		2		0		0		0		0		2
Other Instr.	2		16		5		0		0		0		23
LINDA VISTA													
Pupils - 1966	4	1.4	256	91.8	13	4.7	2	0.7	0	--	4	1.4	279
1967	1	0.5	216	96.0	3	1.3	5	2.2	0	--	0	--	225
1968	1	0.5	207	95.4	3	1.4	4	1.8	0	--	2	0.9	217
Teachers	0		8		0		0		0		0		8
Administrators	0		0		0		0		0		0		*
Other Instr.	0		0		0		0		0		0		0
LOMA ALTA													
Pupils - 1966	29	4.7	477	78.1	92	15.1	8	1.3	0	—	5	0.3	611
1967	24	4.1	448	76.6	102	17.4	9	1.5	1	0.2	1	0.2	585
1968	22	4.1	353	65.4	155	28.7	9	1.6	0	—	1	0.2	540
Teachers	0		17		1		0		0		0		18
Administrators	0		1		0		0		0		0		1
Other Instr.	0		1		0		0		0		0		1

Principal at Sierra Madre Elementary School has administrative responsibilities for Linda Vista School.

	WHITE				NONWHITE								TOTAL
	Spanish Surname		Other White		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
LONGFELLOW													
Pupils - 1966	80	7.9	824	81.3	64	6.3	41	4.0	0	--	5	0.5	1014
1967	104	10.0	817	78.3	74	7.1	39	3.7	1	0.1	9	0.8	1044
1968	123	11.1	794	72.0	122	11.1	44	4.0	0	--	20	1.8	1103
Teachers	1		30		3		0		0		0		34
Administrators	0		2		0		0		0		0		2
Other Instr.	0		2		0		0		0		0		2
MADISON													
Pupils - 1966	130	16.2	197	24.6	444	55.4	10	1.2	1	0.1	20	2.5	802
1967	144	16.2	216	24.4	513	57.8	11	1.3	1	0.1	2	0.2	887
1968	144	15.4	176	18.9	596	63.8	17	1.8	1	0.1	0	--	934
Teachers	0		19		10		0		0		0		29
Administrators	0		2		0		0		0		0		2
Other Instr.	0		3		1		0		0		0		4
McKINLEY													
Pupils - 1966	36	15.9	160	70.5	21	9.2	5	2.2	0	--	5	2.2	227
1967	46	22.3	128	62.1	28	13.6	2	1.0	0	--	2	1.0	206
1968	50	19.6	149	58.4	46	18.0	5	2.0	0	--	5	2.0	255
Teachers	0		7		3		0		0		0		10
Administrators	0		1		0		0		0		0		1
Other Instr.	0		1		0		0		0		0		1
NOYES													
Pupils - 1966	0	--	382	99.1	1	0.3	1	0.3	0	--	1	0.3	385
1967	0	--	344	98.2	2	0.6	2	0.6	0	--	2	0.6	350
1968	2	0.6	336	97.6	1	0.3	2	0.6	1	0.3	2	0.6	344
Teachers	1		9		0		0		0		0		10
Administrators	0		1		0		0		0		0		1
Other Instr.	0		0		0		0		0		0		0
SAN RAFAEL													
Pupils - 1966	2	0.4	471	98.1	0	--	7	1.5	0	--	0	--	480
1967	2	0.4	457	97.5	1	0.2	9	1.9	0	--	0	--	469
1968	9	2.1	411	96.0	1	0.2	7	1.7	0	--	0	--	428
Teachers	0		15		0		0		0		0		15
Administrators	0		1		0		0		0		0		1
Other Instr.	0		0		0		0		0		0		0
SIERRA MADRE													
Pupils - 1966	34	4.9	655	94.1	0	--	7	1.0	0	--	0	--	696
1967	36	5.9	555	91.0	0	--	7	1.1	0	--	12	2.0	610
1968	38	6.8	507	90.4	0	--	10	1.8	0	--	6	1.0	561
Teachers	0		18		0		0		0		0		18
Administrators	0		1		0		0		0		0		1
Other Instr.	0		0		0		0		0		0		0

* Principal at Allendale Elementary School has administrative responsibilities for McKinley Elementary School.

	WHITE				NONWHITE								TOTAL
	Spanish Surname		Other White		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
SIERRA MESA													
Pupils - 1966	15	3.2	458	96.4	0	--	2	0.4	0	--	0	--	475
1967	16	3.5	438	96.1	0	--	2	0.4	0	--	0	--	456
1968	19	4.2	434	95.0	0	--	2	0.4	2	0.4	0	--	457
Teachers	0		13		0		1		0		0		14
Administrators	0		1		0		0		0		0		1
Other Instr.	0		0		0		0		0		0		0
WASHINGTON													
Pupils - 1966	60	5.1	57	4.9	1025	87.4	22	1.9	0	--	8	0.7	1172
1967	57	4.9	38	3.2	1047	89.9	22	1.9	0	--	1	0.1	1165
1968	47	4.1	47	4.1	1036	90.2	18	1.5	1	0.1	0	--	1149
Teachers	0		24		13		0		0		0		37
Administrators	0		2		0		0		0		0		2
Other Instr.	0		8		1		0		0		0		9
WEBSTER													
Pupils - 1966	13	1.9	640	94.3	25	3.7	1	0.1	0	--	0	--	679
1967	12	1.8	644	94.6	22	3.2	3	0.4	0	--	0	--	681
1968	22	3.1	656	92.9	20	2.8	6	0.9	0	--	2	0.3	706
Teachers	0		22		1		0		0		0		23
Administrators	0		1		0		0		0		0		1
Other Instr.	0		0		0		0		0		0		0
WILLARD													
Pupils - 1966	52	6.0	819	93.8	0	--	2	0.2	0	--	0	--	873
1967	39	4.5	815	94.0	3	0.3	6	0.7	0	--	4	0.5	867
1968	63	7.6	743	89.9	6	0.7	14	1.7	0	--	1	0.1	827
Teachers	0		31		0		0		0		0		31
Administrators	0		2		0		0		0		0		2
Other Instr.	0		0		0		0		0		0		0
SPECIAL EDUCATION													
ROOSEVELT													
Pupils - 1966	7	5.2	80	58.8	42	30.9	4	2.9	0	--	3	2.2	136
1967	9	6.3	82	56.9	47	32.6	5	3.5	0	--	1	0.7	144
1968	11	7.9	80	57.6	42	30.2	6	4.3	0	--	0	--	139
Teachers	0		14		0		0		0		0		14
Administrators	0		1		0		0		0		0		1
Other Instr.	0		1		0		0		0		0		1

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JUNIOR HIGH	WHITE				NONWHITE								TOTAL
	Spanish Surname		Other White		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
ELIOT													
Pupils - 1966	66	4.1	1210	74.6	298	18.4	39	2.4	0	—	9	0.5	1622
1967	65	3.8	1200	70.9	380	22.5	39	2.3	0	--	9	0.5	1693
1968	73	4.2	1102	63.8	499	28.8	39	2.2	1	0.1	16	0.9	1730
Teachers	0		62		7		2		0		0		71
Administrators	0		2		1		0		0		0		3
Other Instr.	0		2		1		0		0		0		3
MARSHALL													
Pupils - 1966	68	3.8	1592	88.2	89	4.9	25	1.4	0	—	30	1.7	1804
1967	76	4.4	1525	88.6	84	4.9	30	1.7	0	--	7	0.4	1722
1968	152	8.6	1457	82.5	127	7.2	29	1.6	2	0.1	0	—	1767
Teachers	0		69		1		0		0		0		70
Administrators	0		3		0		0		0		0		3
Other Instr.	0		4		1		0		0		0		5
McKINLEY													
Pupils - 1966	155	13.0	734	61.6	232	19.5	49	4.1	0	—	21	1.8	1191
1967	168	14.4	716	61.3	229	19.6	51	4.4	0	--	3	0.3	1167
1968	169	14.6	699	60.3	236	20.3	52	4.5	1	0.1	3	0.2	1160
Teachers	1		45		4		0		0		0		50
Administrators	0		3		0		0		0		0		3
Other Instr.	1		3		1		0		0		0		5
WASHINGTON													
Pupils - 1966	77	6.2	134	10.7	886	71.1	131	10.5	1	0.1	18	1.4	1247
1967	87	6.5	114	8.5	1017	76.2	108	8.1	0	—	8	0.6	1334
1968	57	4.5	54	4.2	1057	82.9	99	7.8	0	—	8	0.6	1275
Teachers	0		38		20		0		0		0		58
Administrators	1		2		1		0		0		0		4
Other Instr.	0		7		3		1		0		0		11
WILSON													
Pupils - 1966	60	4.1	1351	93.1	3	0.2	26	1.8	0	—	12	0.8	1452
1967	81	5.6	1323	91.4	2	0.1	26	1.8	1	0.1	14	1.0	1447
1968	84	5.9	1298	91.5	5	0.4	21	1.5	1	0.1	9	0.6	1418
Teachers	1		56		1		0		0		0		58
Administrators	0		3		0		0		0		0		3
Other Instr.	0		5		0		0		0		0		5

HIGH SCHOOL	WHITE				NONWHITE								TOTAL
	Spanish Surname		Other White		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
BLAIR HIGH													
Pupils - 1966	148	11.4	789	60.8	286	22.1	48	3.7	1	0.1	25	1.9	1297
1967	185	13.0	853	59.8	318	22.3	62	4.3	1	0.1	7	0.5	1426
1968	180	12.5	882	61.2	311	21.6	59	4.1	3	0.2	6	0.4	1442
Teachers	3		57		6		1		0		0		67
Administrators	0		3		0		0		0		0		3
Other Instr.	0		5		1		0		0		0		6
MUIR HIGH													
Pupils - 1966	95	4.6	1132	54.4	677	32.6	167	8.0	0	—	8	0.4	2079
1967	87	4.1	1039	49.5	795	37.9	169	8.1	0	--	8	0.4	2098
1968	110	5.6	956	49.1	717	36.8	157	8.1	2	0.1	5	0.3	1947
Teachers	0		86		4		1		0		0		91
Administrators	0		4		1		0		0		0		5
Other Instr.	0		7		2		0		0		0		9
PASADENA HIGH													
Pupils - 1966	110	3.2	2994	86.6	274	7.9	50	1.4	3	0.1	26	0.8	3457
1967	134	3.9	2936	86.2	280	8.2	46	1.3	5	0.2	6	0.2	3407
1968	143	4.2	2860	83.6	334	9.7	54	1.6	0	—	31	0.9	3422
Teachers	4		141		3		0		0		0		148
Administrators	0		4		0		0		0		0		4
Other Instr.	0		13		0		0		0		0		13
FOOTHILL HIGH													
Pupils - 1966	18	8.8	98	48.1	88	43.1	0	—	0	—	0	—	204
1967	7	5.8	82	68.3	28	23.3	2	1.7	0	—	1	0.9	120
1968	26	10.8	123	51.3	91	37.9	0	—	0	—	0	—	240
Teachers	0		11		0		0		0		0		11
Administrators	0		1		0		0		0		0		1
Other Instr.	0		1		0		0		0		0		1

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ELEMENTARY	WHITE: Spanish Surname No.	WHITE: Spanish Surname Per Cent	WHITE: Other White No.	WHITE: Other White Per Cent	NONWHITE: Negro No.	NONWHITE: Negro Per Cent	NONWHITE: Chinese, Japanese, Korean No.	NONWHITE: Chinese, Japanese, Korean Per Cent	NONWHITE: American Indian No.	NONWHITE: American Indian Per Cent	NONWHITE: Other Nonwhite No.	NONWHITE: Other Nonwhite Per Cent	TOTAL No.
ALL ELEM.SCHOOLS													
Pupils - 1966	1243	7.1	10831	62.0	4794	27.5	427	2.5	7	0.0	164	0.9	17466
1967	1257	7.4	10162	59.7	5069	29.8	416	2.4	13	0.1	103	0.6	17020
1968	1400	8.4	9469	56.6	5274	31.6	419	2.5	18	0.1	139	0.8	16719
Teachers	3	0.5	465	84.1	74	13.4	11	2.0	0	0.0	0	0.0	553
Administrators	1	3.0	30	90.9	2	6.1	0	0.0	0	0.0	0	0.0	33
Other Instr.	2	4.0	38	76.0	10	20.0	0	0.0	0	0.0	0	0.0	50
SECONDARY													
JR.HIGH TOTALS													
Pupils - 1966	426	5.8	5021	68.7	1508	20.6	270	3.7	1	0.0	90	1.2	7316
1967	477	6.5	4878	66.3	1712	23.3	254	3.4	1	0.0	41	0.5	7363
1968	535	7.3	4610	62.7	1924	26.2	240	3.2	5	0.1	36	0.5	7351
Teachers	2	0.7	270	87.9	33	10.7	2	0.7	0	0.0	0	0.0	307
Administrators	1	6.2	13	81.3	2	12.5	0	0.0	0	0.0	0	0.0	16
Other Instr.	1	3.4	21	72.5	6	20.7	1	3.4	0	0.0	0	0.0	29
SR.HIGH TOTALS													
Pupils - 1966	371	5.3	5013	71.2	1325	18.8	265	3.8	4	0.1	59	0.8	7037
1967	413	5.9	4910	69.6	1421	20.1	279	4.0	6	0.1	22	0.3	7051
1968	459	6.5	4821	68.4	1453	20.6	270	3.8	5	0.1	42	0.6	7051
Teachers	7	2.2	295	93.1	13	4.1	2	0.6	0	0.0	0	0.0	317
Administrators	0	0.0	12	92.3	1	7.7	0	0.0	0	0.0	0	0.0	13
Other Instr.	0	0.0	26	89.7	3	10.3	0	0.0	0	0.0	0	0.0	29
ALL JR. & SR. HIGH SCHOOLS													
Pupils - 1966	797	5.6	10034	69.9	2833	19.7	535	3.7	5	0.0	149	1.1	14353
1967	890	6.2	9788	67.9	3133	21.7	533	3.7	7	0.1	63	0.4	14414
1968	994	6.9	9431	65.5	3377	23.5	510	3.5	10	0.1	78	0.5	14400
Teachers	9	1.4	565	90.6	46	7.4	4	0.6	0	0.0	0	0.0	624
Administrators	1	3.5	25	86.2	3	10.3	0	0.0	0	0.0	0	0.0	29
Other Instr.	1	1.7	47	81.1	9	15.5	1	1.7	0	0.0	0	0.0	58

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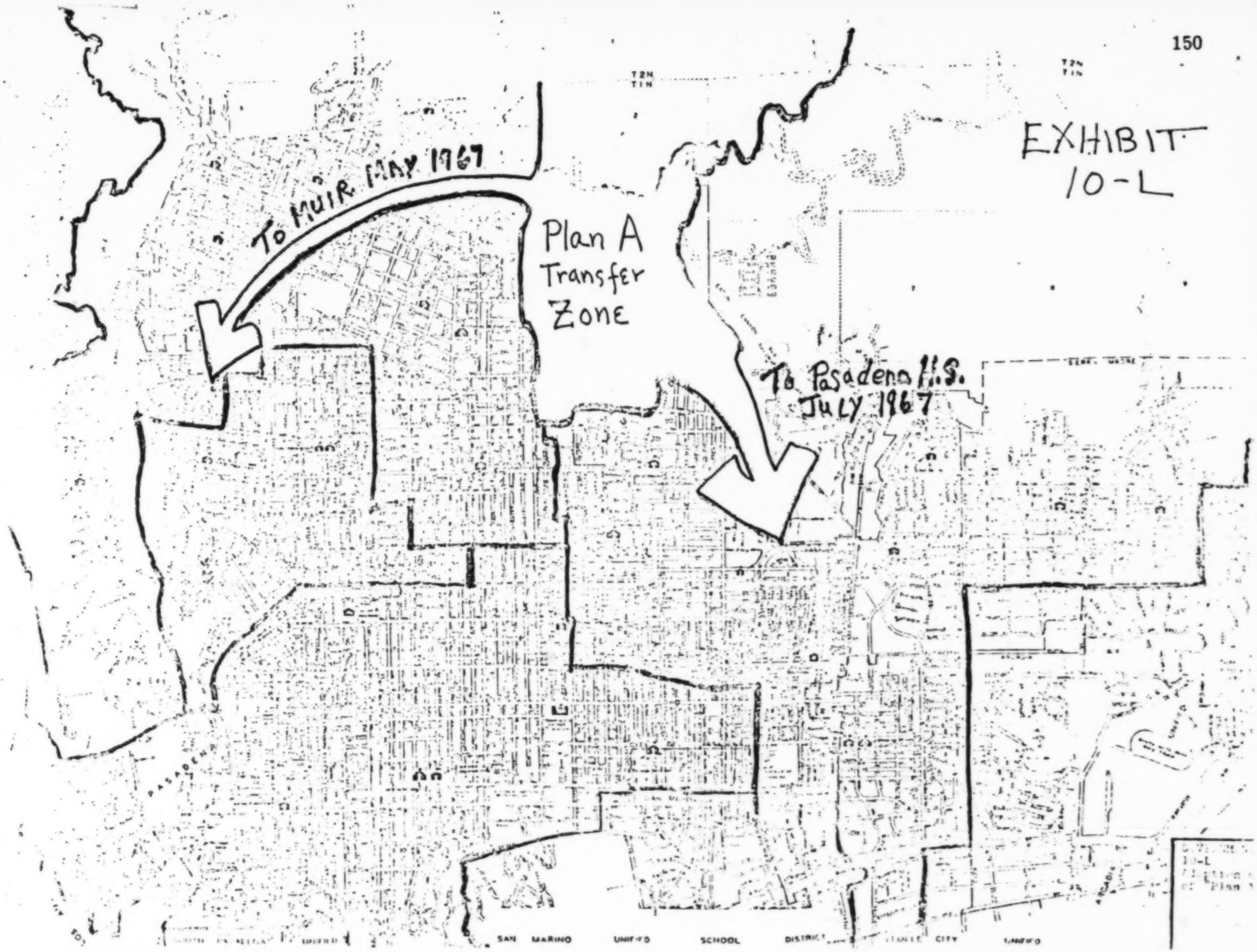
SPECIAL ED.	WHITE: Spanish Surname No.	WHITE: Spanish Surname Per Cent	WHITE: Other White No.	WHITE: Other White Per Cent	NONWHITE: Negro No.	NONWHITE: Negro Per Cent	NONWHITE: Chinese, Japanese, Korean No.	NONWHITE: Chinese, Japanese, Korean Per Cent	NONWHITE: American Indian No.	NONWHITE: American Indian Per Cent	NONWHITE: Other Nonwhite No.	NONWHITE: Other Nonwhite Per Cent	TOTAL No.
ROOSEVELT													
Pupils - 1966	7	5.2	80	58.8	42	30.9	4	2.9	0	0.0	3	2.2	136
1967	9	6.2	82	57.0	47	32.6	5	3.5	0	0.0	1	0.7	144
1968	11	7.9	80	57.6	42	30.2	6	4.3	0	0.0	0	0.0	139
Teachers	0	0.0	14	100.0	0	0.0	0	0.0	0	0.0	0	0.0	14
Administrators	0	0.0	1	100.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Other Instr.	0	0.0	1	100.0	0	0.0	0	0.0	0	0.0	0	0.0	1
ED. CENTER													
Pupils -													
H.T.* 1966	1	4.5	13	59.1	8	36.4	0	0.0	0	0.0	0	0.0	22
1967	2	15.4	7	53.8	4	30.8	0	0.0	0	0.0	0	0.0	13
1968	0	0.0	9	52.9	8	47.1	0	0.0	0	0.0	0	0.0	17
P.S.** 1967	10	5.3	10	5.3	167	88.4	2	1.0	0	0.0	0	0.0	189
1968	17	8.1	19	9.1	171	81.8	0	0.0	0	0.0	2	1.0	209
Instructional Staff at Ed. Center, 1968***	2	2.7	60	81.1	12	16.2	0	0.0	0	0.0	0	0.0	74
DISTRICT TOTAL													
Pupils - 1966	2048	6.4	20958	65.6	7677	24.0	966	3.0	12	0.0	316	1.0	31977
1967	2168	6.8	20049	63.1	8420	26.5	956	3.0	20	0.1	167	0.5	31780
1968	2422	7.7	19008	60.4	8372	28.2	935	2.9	28	0.1	219	0.7	31484
Teachers, Classroom-1968	32	1.0	1044	87.7	120	10.1	15	1.2	0	0.0	0	0.0	1191
Other Instructional Staff at Schools - 1968	3	2.8	86	78.9	19	17.4	1	0.9	0	0.0	0	0.0	109
Instructional Staff at Ed. Center - 1968***	2	2.7	60	81.1	12	16.2	0	0.0	0	0.0	0	0.0	74
Administrators at Schools - 1968	2	3.2	56	88.9	5	7.9	0	0.0	0	0.0	0	0.0	63

* H.T. - Home Teaching
** P.S. - Preschool
*** Instructional Staff at Education Center includes certificated personnel who work directly with students but are not assigned to any one school: special reading teachers, psychologists, music teachers, art consultants, etc.

EXHIBIT
10-L



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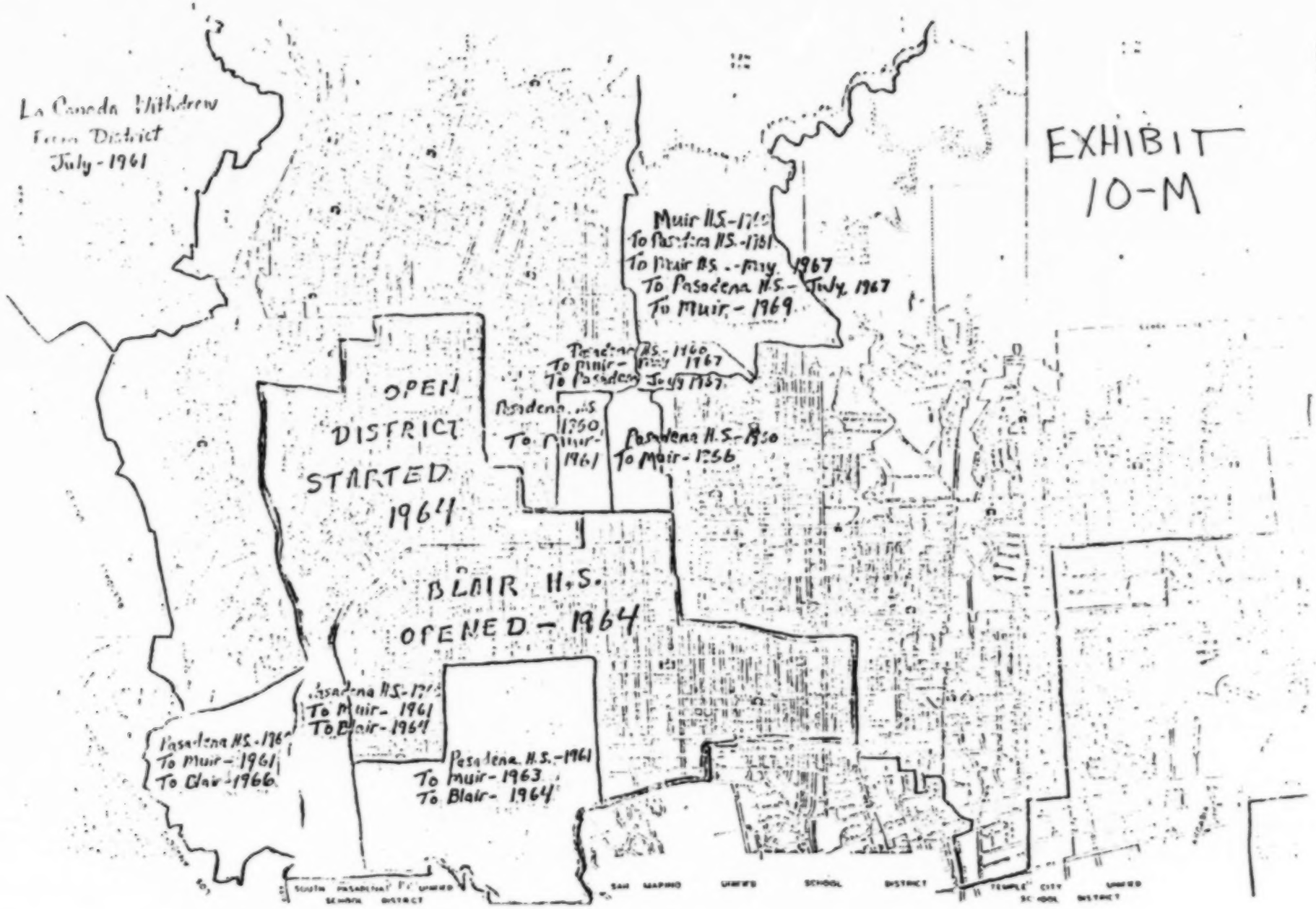

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EXHIBIT 11-O(a).

Pasadena City Schools
Office of the Superintendent of Schools

May 7, 1963

A PLAN FOR GEOGRAPHIC AND CONTROLLED OPEN DISTRICTING WITH THREE HIGH SCHOOLS.

The Plan

1. The unified district would be divided into three high school zones on the basis of the geographic distribution of Caucasian and other non-Negro students.

2. Negro students would have open districting and would be permitted to attend any one of the three high schools, with the condition that a capacity figure would be assigned to each school so that the maximum number enrolled in any one school each year would be controlled.

3. Transportation could be provided throughout all of the high school district in accordance with the present policy. With a third high school, this would require no additional transportation costs.

4. In summary, Caucasians and others would attend the high school in the zone in which they reside, while Negroes would have a choice of high schools on the basis of controlled open districting.

The Result

Starting in 1964, with the completion of the first package increment to house 500 tenth graders in a new third high school, the enrollment and ethnic distribution would be as follows:

	64-65			65-66			66-67		
	*C and Other	Negro	Total	*C and Other	Negro	Total	*C and Other	Negro	Total
Muir	2101	665	2766	2062	560	2622	1989	450	2439
%	76.0%	24.0%		78.6%	21.4%		81.5%	18.5%	
PHS	3202	200	3402	2938	300	3238	2701	400	3101
%	94.1%	5.9%		90.7%	9.3%		87.1%	12.9%	
3rd HS	391	85	476	768	165	933	1170	250	1420
%	82.1%	17.9%		82.3%	17.7%		82.4%	17.6%	
Totals	5694	950	6644	5768	1025	6793	5860	1100	6960
%	85.7%	14.3%		84.9%	15.1%		84.2%	15.8%	

*Caucasian and others.

EXHIBIT 11-O(b).

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Bond issue. She stated that the Council was very appreciative of the help of the Board Members, Dr. Jenkins, and Mr. Norene, in presenting the facts to the parents.

Mr. Stivers asked if those schools who were unable to take action at this time, would be given another opportunity after the start of school in September. *Mrs. Johnson* replied that it would be up to each local unit to decide.

Dr. Jenkins stated that Neptune & Thomas and Associates, the architects for the third high school, have been very busily studying the present high school, analyzing sites and determining how the school could be developed on each of two sites about which the Board is really serious. He said that they have the educational specifications from previous planning for Pasadena High School and Muir High School, which are all being up-dated under the supervision of Mr. Norene.

Dr. Jenkins expressed the hope that he would have a recommendation on the site in the very near future so that plans can move ahead. He noted that the architectural firm is an excellent one, who is willing to work with the Board and staff every step of the way so that the project will be completed by September 1964.

Mrs. LaMotte commented that a word of appreciation and congratulations was due the PTA for moving in so quickly to schedule meetings in order to have its members vote on whether they wished to support a bond issue for the propsed third high school. She felt that they had done a remarkable job.

Mr. Stivers assured Mrs. Johnson that the entire Board shared with Mrs. LaMotte in extending their thanks and congratulations.

High School Districting

Dr. Jenkins announced that although the County Counsel had received calls from all over the State requesting copies of his opinion on the redistricting proposals for Pasadena's senior high schools, the opinion was being released publicly for the first time that day.

Since the opinion is very lengthy, he touched only on the following key points, and the complete opinion is attached to the permanent minutes:

> "The Citizens-Staff Advisory Committee on Districting is to be commended for its intensive and comprehensive investigation of the districting problems facing the Pasadena City High Schools. Their conscientious deliberations and unstinting efforts are indicative of the highest degree of civic responsibility."

With regard to the four recommendations of the Citizens-Staff Advisory Committee On Districting, County Counsel ruled as follows:

> "It is our opinion that no legal problems are presented by the second, third, or fourth recommendations. However, as to Recommendation 1, it is our opinion that its implementation would run counter to the equal protection clause of the Fourteenth Amendment to the United States Constitution. The attendance area boundaries delineated in Plan B are not on their face rational or reasonable. The boundaries are drawn in such a way that some students, who must go to Pasadena High School, will actually have to pass through John Muir High School attendance areas and pass busses carrying pupils who are required to attend the John Muir High School. The boundaries are also such that the reverse is true. We think also that the percentage of quota system established by Recommendation 1 insofar as it would affect the rights of individuals would be held by the courts to be unconstitutional.
>
> "An attendance area boundary line which is not national or reasonable cannot be justified merely by ethic considerations."

Deployment Schools Proposal.

> "The deployment schools proposal is a plan for deploying students from those elementary school attendance areas having over 50% minority group student enrollment to the high schools according to predetermined ratios which will divide the most numerous minority group students equally between the high schools.

Opinion

> "The deployment schools proposal would, in our opinion, be held to be an invasion of constitutional rights because the ratio or quota involved is of necessity based on race, and because it assumes that people are entitled to enjoy their rights on a ratio or quota basis. The cases discussed in our analysis will show that the courts have consistently struck down ratio or quota plans based on race or color as violations of the Fourteenth Amendment to the United States Constitution."

Mr. Kennedy then presented his opinion on the Plan for Geographic and Controlled Open Districting as follows:

Plan of May 7, 1963

> "In our opinion, implementation of this plan would, like Recommendation 1 above, contravene the mandate of the equal protection clause of the Fourteenth Amendment. The constitutional flaw in this plan lies in the fact that attendance area boundary lines are drawn which are applicable to some students and not to others, differentiated on the basis of their race or color."

Alternative Plans

> "The basic concept in 'geographic and controlled open districting' is the establishment of attendance areas together with the establishment of 'open' areas in which the students are permitted, subject to certain controls relating to school capacities, to choose their school of attendance.

Complete Open Districting

> "One variation of this plan may be described as 'Complete Open Districting' wherein attendance areas are eliminated, making the entire school district a 'controlled open' area.

Selected Open Districting

"Another variation of this plan, which may be designated as 'Selected Open Districting', would involve an attendance area for each high school and one or more selected 'controlled open' areas.

Opinion

"In our opinion either of these alternative plans may be promulgated and implemented in ways which would not violate principles of constitutional law.

"With respect to Complete Open Districting, if the controls used by the school authorities are based upon such valid criteria as capacity of schools, proximity of pupils to school facilities, and transportation routes, we think the courts should uphold such a plan.

"With respect to Selected Open Districting, we think a plan of this nature may be promulgated which the courts should uphold. To be valid, both the attendance areas and the selected 'controlled open' areas must be established on reasonable and rational bases, and, again, the controls used must be based upon valid criteria as set forth above."

Dr. Jenkins stated that the County Counsel then summarized many court cases, including some reviewed in the United States Supreme Court, and read the conclusions set forth by the various courts.

Dr. Jenkins then commented that Harold W. Kennedy, County Counsel, is a resident of Pasadena and is sensitive to the school district's desire to find the best answer for Pasadena City Schools and the community.

Dr. Jenkins said that he and Mr. Stivers are most grateful for the way Mr. Kennedy worked to find a legal solution and carefully studied other alternatives. The County Counsel studied not only the recommendation of the Citizens-Staff Advisory Committee on Districting, but all the various plans proposed, and submitted one opinion covering all plans. He added that this was the reason that it took so long to receive the opinion.

Dr. Jenkins noted that Mr. Kennedy's goal was to try to give this Board "running room" to achieve the kinds of results that it is felt will be to the best interest of the Pasadena schools and of the community. *Dr. Jenkins* said that he spoke with Mr. Kennedy on the telephone at least ten or fifteen times, and Mr. Stivers and he met with Mr. Kennedy's staff several times. At one point three key people from County Counsel's office worked in Dr. Jenkins' conference room for ten hours, looking at maps, figures and research material, in an effort to make sure that the Geographic and Controlled Open Districting, based on capacity, will work. Therefore, *Dr. Jenkins* said that he appreciated the work of the County Counsel in making it possible to find a legal answer to the high school districting problem.

Mr. Stivers joined with the Superintendent in commending the County Counsel for the time and effort spent in preparing this opinion. He noted that the Board and the Superintendent were very depressed when they first heard what appeared to be a totally negative opinion. However, along with the negative opinion was an invitation to explore other ways to accomplish the results which all know are so vital to the community. *Mr. Stivers* said that it was believed the road is now open, and asked Dr. Jenkins to present the plan included on the Supplemental Agenda.

Dr. Jenkins recalled that as of the previous Friday, rough figures on projected senior high school enrollments were sent to the Board members, and since that time they have been revised. He stated that the Department of Research had continued working right up until the Board meeting in an effort to refine the figures so that the plan will really achieve the results that are desired.

Dr. Jenkins then read the proposed plan for the implementation of "Geographic and Controlled Open Districting".

"The Superintendent recommends that the plan for 'Geographic and Controlled Open Districting' be implemented

for three high school zones on the following basis, effective September 1964:

1. The north-south line between Muir and Pasadena High Schools to remain the same to Mountain Avenue.
2. The new third high school district to include the following elementary areas now in Muir and Pasadena High Schools: Arroyo Seco, Garfield, Allendale, McKinley, Hamilton, Jefferson west of Sierra Bonita, and Madison and Lincoln south of Orange Grove Boulevard.
3. A 'Selected Open District' to include Washington, Cleveland, and Lincoln and Madison north of Orange Grove Boulevard, as an area in which all students would be permitted to attend any one of the three high schools on a first, second, and third choice basis, until the capacity of each school has been reached.
4. An established capacity for each high school annually, in order to attain sound distribution of students throughout the district.

"The Superintendent further recommends that the plan for 'Geographic and Controlled Open Districting' as approved by the Board of Education on May 14, 1963, be reaffirmed as the basic districting policy for senior high schools, effective September 1964, but that any further detailed implementation plans on a possible two-high school basis be deferred until after the bond election."

As *Dr. Jenkins* read the recommendation, Dr. Hanson pointed out the areas on the map. With regard to item 3 of the recommendation, pertaining to a "Selected Open District", *Dr. Jenkins* advised that County Counsel is of the opinion that this would be legal and would hold up in the courts. Under this plan students residing in this area would have an opportunity to choose which of the three high schools they might wish to attend. Students would indicate their first, second, and third choices. They would be assigned on the basis of geographic criteria, with those indicating first choice and living closest to the school being assigned to that school first. Those indicating first choice and living further away will be assigned next, etc. If all first choices for a school are exhausted, the second choices will be assigned.

Dr. Jenkins noted that item 4, regarding the annual establishment of capacities for the three high schools, is within the authority of the Board of Education, according to the County Counsel, in order to make the best use of capacities, and to assign teachers.

Dr. Jenkins pointed out that the school district now has a basic policy that will work. However, it has taken hours, days, and weeks to analyze the thousands of students distributed in the different parts of the City so that the results will be the way they should be in terms of the best use of facilities, and best ethnic distribution.

Dr. Jenkins commented that if the sad day should come that this policy must be implemented on a two-high school basis, the figures will be studied again.

Dr. Jenkins then called attention to a fact sheet, which was distributed to the Board and was available to the members of the audience, and which was similar to the fact sheet presented on May 7 in connection with the Controlled Open Districting Plan. This fact sheet includes projected senior high school enrollments for school years 1964-65, 1965-66, and 1966-67.

As of 1966-67, with three tenth grades assigned to the 3rd high school, Muir High School would have a total enrollment of 2423 students, with 18.6% being Negro; Pasadena High School would have a total of 3134 students, with 12.9% being Negro; and the third high school would have a total enrollment of 1403, with 17.8% Negro. In developing these figures, *Dr. Jenkins* stated that these are predictions of the estimated distribution under this plan.

Mr. Stivers thanked Dr. Jenkins and invited Board members to comment. Since many weeks had been spent in discussion of the districting plans, there were no further requests to speak at that time.

Motion

On Motion of Mr. Solision, seconded by Mr. Shatford, by unanimous vote of the five-member Board it was approved and made the action of the Board that the Superintendent's plan for "Geographic and Controlled Open Districting" be implemented for three high school zones on the following basis, effective September 1964:

1. The north-south line between Muir and Pasadena High Schools to remain the same to Mountain Avenue;
2. The new third high school district to include the following elementary areas now in Muir and Pasadena High Schools: Arroyo Seco, Garfield, Allendale, McKinley, Hamilton, Jefferson west of Sierra Bonita, and Madison and Lincoln south of Orange Grove Boulevard;
3. A "Selected Open District" to include Washington, Cleveland, and Lincoln and Madison north of Orange Grove Boulevard, as an area in which all students would be permitted to attend any one of the three high schools on a first, second, and third choice basis, until the capacity of each school has been reached;
4. An established capacity for each high school, annually, in order to attain sound distribution of students through the district;

that the plan for "Geographic and Controlled Open Districting", as approved by the Board of Education on May 14, 1963, be reaffirmed as the basic districting policy for senior high schools, effective September 1964, but that any further detailed implementation plans on a possible two-high school basis be deferred until after the bond election; and that the recommendation be accepted with a word of thanks to the County Counsel for the difficult task given him and Mr. Stivers, to Dr. Jenkins, and Dr. Hanson for the long hours spent in trying to solve this difficult problem.

Mr. Shatford stated that he was extremely pleased with the action taken that day and that he was proud of the Board and

Dr. Jenkins. In taking this action, he felt that Pasadena had taken action that was most commendable, instead of waiting for such incidents as experienced in Alabama. He expressed the hope that with the leadership displayed, the members of the community will pitch in and make this plan work. If all have a spirit of good will toward this plan, Pasadena can have a situation that will be an example to the nation.

With regard to the County Counsel's opinion, *Mr. Shatford* called attention to a statement he had prepared which he read as follows:

> "Before replying to the opinion, I want to praise County Counsel for the courtesy and cooperation extended to Pasadena's Superintendent of Schools. Although County Counsel came to what I regard to be arroneous conclusions, he and his staff did work patiently with the Superintendent so that the Superintendent could present a solution which has much to commend it. As a general rule I have found County Counsel's office to be composed of hard-working, well-informed public servants."

Dr. Freeman stated that all appreciate the work that had been done in developing the districting plan, and said that the fine work that laid the basis for this plan, which was done by the Citizens-Staff Advisory Committee on Districting, should not be forgotten as the Committee worked very hard. The Committee did the basic work, and *Dr. Freeman* said that he was sure that both Dr. Jenkins and Dr. Hanson would agree. Therefore, the members of the Committee, too, should be congratulated. *Dr. Freeman* said that he felt this was a great day for Pasadena.

Mrs. LaMotte said that she was also very pleased and happy with County Counsel's opinion, and reminded the Board that it was said about two or three weeks ago that the Controlled Open Districting Plan is one with which the community can live.

Dr. Jenkins added that the Board and staff had been working for weeks in line with the principles set up by the Citizens-Staff Advisory Committee.

Presentation of Year Books.

Since the students had arrived to present the year books, Mr. Shatford said that he would defer to them and continue his statement after the presentation.

Members of the Yearbook Staffs of John Muir High School, Pasadena High School, and Pasadena City College presented their respective yearbooks to members of the Board and staff. Copies of "artes", a student anthology and class record by students of Pasadena High School, were also presented.

Mr. Stivers thanked the students on behalf of the Board and staff, stating that their libraries were growing and that they have a long shelf of this material. He assured the students that the Board looks forward to and greatly appreciates receiving these yearbooks each year.

Recess.

As requested by members of the Board, the meeting was recessed from 4:07 to 4:20 p.m.

On reconvening, *Mr. Shatford* stated that he wanted it known that his criticism of County Counsel's conclusions pertained only to the opinion. Although he hated to disagree with County Counsel, he felt it important that some things be said about this opinion. *Mr. Shatford* then read the following statement:

> "Unless we are particularly obtuse, all of us are aware that one of the leading problems of the day is that of de facto segregation. The President of the United States spoke of it last Thursday. On the same day a group of community leaders met for several hours in Los Angeles and de facto segregation was one of the topics. You can scarcely pick up a newspaper or magazine and fail to find something about de facto segregation.
>
> "In looking at the problem of de facto segregation boards of education are met by two competing theories.

EXHIBIT 11-0(c).

Pasadena City Schools
Department of Research

December 1967

SENIOR HIGH SELECTED OPEN DISTRICT.

School	Total	Caucasian No.	Caucasian Percent	Negro No.	Negro Percent	Others No.	Others Percent
Grade 10							
Blair	91	8	8.8	70	76.9	13	14.3
Muir	71	7	9.9	50	70.4	14	19.7
Pasadena	144	23	16.0	106	73.6	15	10.4
Total	306	38	12.4	226	73.9	42	13.7
Grade 11							
Blair	62	9	14.5	47	75.8	6	9.7
Muir	100	11	11.0	77	77.0	12	12.0
Pasadena	116	11	9.5	89	76.7	16	13.8
Total	278	31	11.2	213	76.6	34	12.2
Grade 12							
Blair	87	13	14.9	62	71.3	12	13.8
Muir	116	9	7.8	89	76.7	18	15.5
Pasadena	82	9	11.0	57	69.5	16	19.5
Total	285	31	10.9	208	73.0	46	16.1
Total							
Blair	240	30	12.5	179	74.6	31	12.9
Muir	287	27	9.4	216	75.3	44	15.3
Pasadena	342	43	12.6	252	73.7	47	13.7
Total	869	100	11.5	647	74.5	122	14.0

EXHIBIT 11-0 (d)

SENIOR HIGH SCHOOL
TOTAL OPEN DISTRICT STUDENTS VOLUNTEERED, MANDATED OR ASSIGNED
1964-65, 1965-66 and 1966-67

School	1964-65 C	1964-65 N	1964-65 O		1965-66 C	1965-66 N	1965-66 O		1966-67 C	1966-67 N	1966-67 O		Total C	Total N	Total O	
BLAIR																
Volunteered[1]	6	38	3		5	67	8		6	55	5		17	160	16	
Mandated[2]	-	-	-		-	-	-		-	-	-		-	-	-	
Sub-Total	6	38	3	(47)	5	67	8	(80)	6	55	5	(66)	17	160	16	(193)
Assigned[3] by Secondary Div.	6	14	6		16	41	7		10	37	7		32	92	20	
TOTAL	12	52	9	(73)	21	108	15	(144)	16	92	12	(120)	49	252	36	(337)
WEIR																
Volunteered																
Sibling	9	17	15		7	23	7		2	22	3		18	67	25	
Proximity	5	19	6		4	31	7		1	28	5		10	98	18	
Mandated	-	-	-		-	-	-		-	-	-		-	-	-	
Sub-Total	14	36	21	(71)	11	54	14	(104)	3	50	8	(61)	28	165	43	(236)
Assigned by Secondary Div.	5	34	3		4	37	13		10[a]	52[a]	6[a]		19	123	22	
TOTAL	19	70	24	(113)	15	116	27	(158)	13	102	14	(129)	47	288	65	(400)
PHS																
Volunteered	17	116	3		14	49	19		12	67	9		43	232	36	
Original 1st Choice	(10)	(29)	(4)													
Campaign Volunteers[4]	(7)	(87)	(4)													
Mandated	8	12	6		4	22	3		9	53	8		21	87	19	
Sub-Total	25	128	14	(167)	18	71	24	(113)	21	120	17	(158)	64	319	55	(438)
Assigned by Secondary Div.	-	10	1		-	14	1		-	25	-		-	49	2	
TOTAL	25	138	15	(178)	18	85	25	(128)	21	145	17	(183)	64	368	57	(489)
GRAND TOTAL																
Volunteered	37	190	32		30	195	41		21	172	22		88	557	95	
Mandated	8	12	6		4	22	5		9	53	8		21	87	19	
Sub-Total	45	202	38	(285)	34	217	46	(297)	30	225	30	(285)	109	644	114	(867)
Assigned by Secondary Div.	11	58	10		20	92	21		20	134	13		51	284	44	
TOTAL	56	260	48	(364)	54	309	67	(430)	50	339	43	(432)	160	908	158	(1226)

BEST COPY AVAILABLE

OPEN DISTRICT STUDENTS VOLUNTEERED, MANDATED OR ASSIGNED (continued)

School	1967-68 C	N	O	
BLAIR				
Volunteered[1]	4	31	5	
Mandated[2]	5	37	3	
Sub-Total	9	68	8	(85)
Assigned[3] by Secondary Div.	11	46	12	
TOTAL	20	114	20	(154)
MUIR				
Volunteered	4	24	8	
Sibling	-	-	-	
Proximity	-	-	-	
Mandated	4	24	8	(36)
Sub-Total	17*	62*	9*	
Assigned by Secondary Div.	21	86	17	(124)
TOTAL				
PHS				
Volunteered	22	69	10	
Mandated	6	49	11	
Sub-Total	28	118	21	(167)
Assigned by Secondary Div.	2	17	2	
TOTAL	30	135	23	(188)
GRAND TOTAL				
Volunteered	30	124	23	
Mandated	11	86	14	
Sub-Total	41	210	37	(288)
Assigned by Secondary Div.	30	125	23	
TOTAL	71	335	60	(466)

NOTE: The "No Show" students were not subtracted from the above figures.
See note of attached July 25, 1966 report.

FOOTNOTES:

1 Volunteered - Those who were given 1st choice at time of drawing

2 Mandated - Those who were requested to attend a school within the enrollment limits specified

a The number who "volunteered" originally for PHS in 1964 was smaller the first time that expression of choice was requested. The subsequent "campaign" raised the number to 141.

3 Assigned - Students new to the district who were requested to attend any one of the three high schools either to replace transfers or to maintain proportion of total enrollment at each school. Students were assigned by Secondary Division.

* Includes students living in Muir area who moved into the Selected Open District area and wished to complete the year at Muir (and 12th grade in case of second semester 11th grade students).

NOTE: A number of Selected Open District students at Continuation High School had to be reassigned to three high schools when many buildings at Continuation High School were closed for non-compliance with Field Act requirements.

Pasadena City Schools
Department of Research
July 25, 1966

SENIOR HIGH SCHOOL

TOTAL OPEN DISTRICT STUDENTS VOLUNTEERED, MANDATED OR ASSIGNED*

1964-65, 1965-66 and 1966-67

School		1964-65	1965-66	1966-67**	Total
Blair	Volunteered[1]	47	80	66	193
	Mandated[2]	0	0	0	0
	Assigned[3]	26	64	3	93
	***"No show"[4]	0	—3	0	—3
	Total	73	141	69	283
Muir	Volunteered	71	104	69	236
	Mandated	0	0	0	0
	Assigned	42	54	1	97
	***"No show"	0	—2	0	—2
	Total	113	156	62	331
PHS	Volunteered	167a	82	88	337
	Mandated	0	31	70	101
	Assigned	11	15	4	30
	***"No show"	—2	—5	—10	—17
	Total	176	123	152	451
Grand Total					
	Volunteered	285	266	215	766
	Mandated	0	31	70	101
	Assigned	79	133	8	220
	***"No show"	—2	—10	—10	—22
	Total	362	420	283	1,065

* *High school figures obtained from Mr. Norene.*

** As of July 6, 1966—See new figures (additional students assigned from July 6, 1966 through the school year 1966-67).

1. Volunteered—Those who were given *1st choice* at time of drawing.

a It will be remembered that the number who "volunteered" originally for PHS in 1964 was smaller the first time that *expression*

(Footnote continued on next page.)

Pasadena City Schools
Department of Research

October 8, 1965

Junior High Schools—Selected Open District
Students Attending John Marshall Junior High

	C	N	O	Total
Grade 7	5	30	5	40
Grade 8	6	12	1	19
Total	11	42	6	59

Senior High Schools—Selected Open District
10th Grade Students and Returning 11th Grade Students

	Grade 10				Grade 11				Total 10 and 11			
School	C	N	O	Total	C	N	O	Total	C	N	O	Total
Blair	12	66	10	88	3	39	8	50	15	105	18	188
Muir	11	90	17	118	14	55	24	93	25	145	41	211
PHS	13	63	18	94	12	104	12	128	25	167	30	222
Total	36	219	45	300	29	198	44	271	65	417	89	571

of choice was requested. The subsequent "campaign" raised the number to 167.

2. Mandated—Those who were requested to attend a school within the enrollment limits specified.

3. Assigned—Students new to the district who were requested to attend any one of the three high schools either to replace transfers or to maintain proportion of total enrollments at each school.

*** "No show"—Those (of Volunteered, Mandated or Assigned) who failed to register for any reason. Not included in subsequent report—We are certain that the number of "no show" students was greater for each year but there are no longer any records which may be checked for actual number or ethnic distribution. 6-26-68

Pasadena City Schools
Department of Research

November 3, 1966

Senior High Selected Open District

		Caucasian		Negro		Others	
School	Total	No.	Percent	No.	Percent	No.	Percent
Grade 10							
Blair	66	8	12.1	52	78.8	6	9.1
Muir	71	7	9.9	53	74.6	11	15.5
Pasadena	137	14	10.2	108	78.8	15	11.0
Total	274	29	10.6	213	77.7	32	11.7
Grade 11							
Blair	92	11	12.0	69	75.0	12	13.0
Muir	103	9	8.7	77	74.8	17	16.5
Pasadena	78	9	11.5	52	66.7	17	21.8
Total	273	29	10.6	198	72.5	46	16.9
Grade 12							
Blair	63	8	12.7	47	74.6	8	12.7
Muir	82	11	13.4	48	58.5	23	28.1
Pasadena	115	12	10.4	93	80.9	10	8.7
Total	260	31	11.9	188	72.3	41	15.8
Total							
Blair	221	27	12.2	168	76.0	26	11.8
Muir	256	27	10.6	178	69.5	51	19.9
Pasadena	330	35	10.6	253	76.7	42	12.7
Total	807	89	11.0	599	74.2	119	14.8

Pasadena City Schools
Department of Research

December 1967

SENIOR HIGH SELECTED OPEN DISTRICT

School	Total	Caucasian No.	Caucasian Percent	Negro No.	Negro Percent	Others No.	Others Percent
Grade 10							
Blair	91	8	8.8	70	76.9	13	14.3
Muir	71	7	9.9	50	70.4	14	19.7
Pasadena	144	23	16.0	106	73.6	15	10.4
Total	306	38	12.4	226	73.9	42	13.7
Grade 11							
Blair	62	9	14.5	47	75.8	6	9.7
Muir	100	11	11.0	77	77.0	12	12.0
Pasadena	116	11	9.5	89	76.7	16	13.8
Total	278	31	11.2	213	76.6	34	12.2
Grade 12							
Blair	87	13	14.9	62	71.3	12	13.8
Muir	116	9	7.8	89	76.7	18	15.5
Pasadena	82	9	11.0	57	69.5	16	19.5
Total	285	31	10.9	208	73.0	46	16.1
Total							
Blair	240	30	12.5	179	74.6	31	12.9
Muir	287	27	9.4	216	75.3	44	15.3
Pasadena	342	43	12.6	252	73.7	47	13.7
Total	869	100	11.5	647	74.5	122	14.0

EXHIBIT 11-O(e).

Minutes of Regular Meeting — Page No.
June 15, 1965 - No. 57 — 15,514

Miss McFarland stated that she had just received a report from Dr. Joseph T. Hanson, Administrative Director for Research, stating that the number of volunteers from Washington had increased to 25, and the total participating had increased to 128. Of the 25 from Washington, 17 are new volunteers and 8 are renewals.

Dr. Jenkins commented that the totals are changing day by day, and said that he would make further progress reports as they are received.

Dr. Jenkins then recommended that the following amendment be adopted for the continued implementation of the Geographic and Controlled Open Districting at the elementary level:

> "A school which was previously a receiving school in the Geographic and Controlled Open Districting, but which is no longer a receiving school, may make the exception to accept a sibling if an older brother and/or sister is enrolled in the school under this districting plan. This exception can be made only if seats are available at the appropriate grade level, and only in the event the sibling was not eligible to attend the school when it was a receiving school."

Mr. Shatford questioned whether a student would be compelled to continue at a receiving school if the move did not prove satisfactory. While he agreed that a student should not be permitted to go to one receiving school one year and another receiving school the next, he should be permitted to return to his home school.

It was generally agreed by the Board that a student should have the option to transfer back to his home school when such an adjustment seems to be advisable.

Motion.

On Motion of Dr. Freeman, seconded by Mr. Stivers, by unanimous vote of the five-member Board, the Superintendent's recommendation, that a school which was previously a receiving school in the Geographic and Controlled Open Districting, but which is no longer a receiving school, may make the exception to accept a sibling if an older brother and/or sister is enrolled in the school under this districting plan, but only if seats are available at the appropriate grade level, and only in the event the sibling was not eligible to attend the school when it was a receiving school, was approved and made the action of the Board.

Junior High School Districting.

Dr. Jenkins noted that the Board would continue its review of the recommendation on Junior High School districting which he submitted to the Board on May 25, 1965, and recalled that the Board had asked to hold this item until Mr. Stivers returned from out of town.

Dr. Jenkins then recommended that the Board-adopted principle of Geographic and Controlled Open Districting be implemented at the junior high school level for 7th and 8th grade students residing in the High School Selected Open District Area within the Washington Junior High School zone, with Washington Junior High School as the sending school for students who may wish to volunteer to attend Marshall Junior High School, the receiving school; the number of students is not to exceed 30

at the 7th-grade level and 30 at the 8th-grade level during the 1965-66 school year; and transportation is to be provided by the student unless room is available on an existing bus route.

Dr. Jenkins noted that the possibility of cooperating with the Pasadena City Lines to supply transportation for these students had been studied. Dr. Egly has conferred with Mr. Campbell, who assured Dr. Egly that the Pasadena City Lines would be pleased to work with the school district to provide extra buses on Washington, which could drop the students off at Allen and then go on to Pasadena High School to drop off the high school students.

Dr. Jenkins then called attention to a communication he had just received from Byron Caldwell, President of the Pasadena Branch, N.A.A.C.P., in which it was stated that the N.A.A.C.P. believes it a duty of the Board to provide the pupils with education under adequate, uncrowded conditions; and to transport pupils, when need be, to the places where this commodity can be had. It also expressed the opinion that plans for pupil transfer, such as Plan VI, can be made to work only if the Board furnishes the transportation that will relieve the overcrowded condition of both the pupils transferred and the pupils who remain in their neighborhood schools. Therefore, he urged the Board to provide transportation to the 60 students transferring from Washington to Marshall.

Dr. Jenkins stated that he had received a couple of telephone calls that day about the capacity of Washington Junior High School as compared to "overcrowded" conditions at Eliot. While statistically this may seem to be the case, Washington has a number of special programs requiring smaller classes and, as a consequence, more classrooms. However, the only available space is at Marshall Junior High School until a new junior high school can be built.

Mr. Shatford asked Dr. Jenkins if it was his intent that bus tickets for the Pasadena City Lines would be furnished to students needing transportation to Marshall, or whether it would

simply be a question of making this service available and asking the parents to pay for the transportation.

Dr. Jenkins replied that it would cost approximately $36 per pupil per year for student books on the Pasadena City Lines as compared with the present cost per pupil of $65 to $69 per year. Therefore, it could be handled either way.

Mr. Shatford again stated that if given the inducement of transportation, there would be a better chance of getting volunteers. Therefore, he would like to see this recommendation include a provision that transportation would be furnished by the school district or through bus tickets.

Dr. Egly stated that he expected to have a letter from the Pasadena City Lines before the first of July as to whether they will work with the school district to provide transportation on Washington Boulevard.

Dr. Freeman commented that, at $36 per pupil, it would only cost about $2,160 for the 60 pupils, and he would be in favor of providing bus tickets.

Mrs. LaMotte recalled that a few weeks previously she had said she would favor providing transportation if it would relieve overcrowded schools. She felt that the suggestion to use the Pasadena City Lines was a good one because it would be cheaper than the present transportation cost. Therefore, she would be willing to provide transportation, until a bond issue can be passed, to students who transfer from overcrowded schools.

Mr. Salisian said he felt that if transportation is provided in this instance, it should be provided at all levels. Therefore, he would not favor providing transportation if students transfer on a voluntary basis. If they were forced to transfer it would be a different situation and he would then be in favor of providing transportation.

Mr. Stivers reminded the Board that it must not forget that its job is to provide the best education possible for all students

within the district, and, as far as he was concerned, he always believed very strongly that this should be done without regard to race, creed or color.

Mr. Stivers then asked, if the city bus line would continue on to the high school, whether this might possibly provide for a reduction in the total transportation costs for the high school.

Dr. Jenkins said that, according to guesstimates, this would probably save several thousand dollars, where shuttle buses are operated. However, the district must wait for a decision from the Pasadena City Lines.

Mr. Salisian stated that if it is possible to save money on transportation for the high schools, this should not be used as an excuse to spend it for the junior high schools. The school district needs money and is looking for ways to save additional dollars in the budget. In his opinion, education comes first, and if it is necessary to change the transportation policy, then the Superintendent should study the whole transportation program.

Mr. Shatford pointed out that the use of the Pasadena City Lines from Washington to Marshall might have some bearing on whether this route is continued. If it is not, it would cost the district double the amount to transport high school students using this bus.

Mr. Stivers remarked that the Board would be defeating its purpose in trying to do the best job that it can if it should attempt to make a city-wide policy as a result of this proposal, and added that each concern along this line will have to be determined on its own merits, without relation to any other situation. What the Board of Education was discussing was a choice between providing two classrooms at Washington to take care of these 60 pupils, or moving two classes to another school that is not too far away. In weighing the cost of these two alternatives, the cost to transport these students would be about 1/30 of the cost to build two classrooms.

Mr. Stivers stated that, regardless of what is done about providing transportation from Washington to Marshall, steps should be taken immediately to meet with the Pasadena City Lines to work out plans for a high school shuttle bus service if, in fact, the savings would be as much as they appear to be.

Mr. Laven Lanier, 380 Dearborn Street, Pasadena, said that the parents she had talked with regarding the junior high school open districting have indicated that they would be extremely interested in having their children transfer to Marshall if transportation is provided. She feels that public transportation for students at the 7th and 8th grade level is safe and it would be inexpensive for the school district.

Recess.

The meeting was recessed from 4:15 to 4:27 p.m.

On reconvening, *Mr. Salisian* asked that the transportation issue be voted on separately.

Motion.

On motion of Dr. Freeman, seconded by Mr. Salisian, by unanimous vote of the five-member Board, the Superintendent's recommendation that the Board-adopted principle of Geographic and Controlled Open Districting be implemented at the junior high school level for 7th and 8th grade students residing in the High School Selected Open District area within the Washington Junior High School zone, with Washington Junior High School as the sending school for students who may wish to volunteer to attend Marshall Junior High School, the receiving school; the number of students is not to exceed 30 at the 7th-grade level and 30 at the 8th-grade level during the 1965-66 school year, was approved and made the action of the Board.

Motion.

Dr. Freeman Moved and Mr. Stivers Seconded the motion, that transportation for the 7th and 8th grade students residing in the High School Selected Open District area which lies within the

Washington Junior High School zone be provided by the school district by means of a shuttle-bus service utilizing the Pasadena City Lines, unless room is available on an existing school bus.

Mr. Salisian asked the Board what it would do in the event that the Pasadena City Lines should decide, after a few months, to discontinue this route. He stated that he would not like to promise transportation to the students and then have to tell them later that transportation is not available.

Mr. Stivers said that he felt that the motion just made was a very important part of the action being taken that day because it would not only be helping to relieve Washington, but it would also control the cost.

Mrs. LaMotte agreed, and stated that this is a unique situation because there is already transportation provided on Washington Boulevard. There is no public transportation between Eliot and Wilson, so that would be a different situation.

It was the consensus of the Board that, if the Pasadena City Lines should discontinue the service, the students should be permitted to transfer back to Washington, if the Board feels at that time that it cannot afford to provide a shuttle bus as part of its regular transportation program.

Question.

Mrs. LaMotte then called for the question, and, by vote of 4 to 1, with Mr. Salisian voting "NAY", the motion was approved and made the action of the Board.

Washington Elementary School.

Dr. Jenkins recalled that the possibility of using the former Child Care room at Washington Elementary School was raised a few weeks previously when he had reported on ways in which elementary schools could be utilized throughout the district in order to avoid double sessions. The use of this room was also questioned in a letter at the last meeting by the N. A. A. C. P.

Dr. Jenkins noted that the Board members have seen this room, which is a lower-level room with windows and an exit; and it was used for years by the Child Care program. However, it may be possible that enough students will be transferring to receiving schools between now and the end of the month so that it will not be necessary to use this room.

Dr. Jenkins stated that he had also suggested at the last meeting the possibility of a districting change between Lincoln and Cleveland, whereby more students could be assigned to Cleveland, which has the additional room and some of the finest elementary facilities in the school district. Although this is not as urgent a problem as the one at Washington Junior High School, he would need Board guidance. He added, however, that this problem might be resolved by the open districting plan before the end of the month.

Mrs. LaMotte said that she was astonished at all the furor raised over the use of this room. While it may be substandard, it is perhaps better than a lot of bungalows that are being used elsewhere. Therefore, she had no concern about using this room for a regular classroom.

Mr. Shetford commented that with two schools (Lincoln and Washington) having enrollments over a thousand, it would be advisable to reduce enrollments by giving students and parents every encouragement to participate in this voluntary plan, and he would be in favor of providing transportation to the receiving schools.

EXHIBIT 11-O(f)

Pasadena Unified School District
Office of the Superintendent of Schools

Pasadena, California
June 15, 1965

GEOGRAPHIC AND CONTROLLED OPEN DISTRICTING
INFORMATION SHEET

FOR PRESENT SIXTH AND SEVENTH GRADE STUDENTS

On June 15, 1965, the Pasadena Board of Education approved the Superintendent's recommendation that the Board approved principle of Geographic and Controlled Open Districting be implemented at the junior high school level for present sixth and seventh grade students.

The policy is stated in the Board Minutes as follows:

> "The Superintendent recommends that the Board adopted principle of Geographic and Controlled Open Districting be implemented at the junior high school level for seventh and eighth grade students residing in the High School Selected Open District are within the Washington Junior High School zone, with Washington Junior High School as the sending school for students who may wish to volunteer to attend Marshall Junior High School, the receiving school. The number of students is not to exceed 30 at the seventh grade level during the 1965-66 school year.
>
> "It was approved and made action of the Board that transportation for the seventh and eighth grade students residing in the High School Selected Open District area within the Washington Junior High School zone be provided by the school district by means of a shuttle-bus service utilizing the Pasadena City Lines, unless room is available on an existing school bus."

Procedures for implementation of this policy have been established as follows:

1. Parents of present sixth grade and seventh grade students residing in the High School Selected Open District area within the Washington Junior High School zone, who wish to enroll their son/daughter at Marshall Junior High School, must complete the attached form at the earliest possible date and mail it or bring to:

   Mr. George W. Norene
   Assistant Superintendent for Secondary Schools
   351 South Hudson Avenue, Pasadena, Tel. No.: 795-6981

2. Students who wish to enroll at Marshall Junior High School should plan to attend that school for the remainder of their junior high school years (7th, 8th, and 9th grade for present sixth grade students; 8th and 9th grade for present seventh grade students), unless the parents move to another junior high school zone.

3. Assignments to Marshall Junior High School will be made in accordance with the order of applications received prior to June 30.

Further information may be obtained from the office of the Assistant Superintendent for Secondary Schools, 351 South Hudson Ave., Pasadena, Tel. No.: 795-6981.

EXHIBIT 11-U(a)

MINUTES OF THE SPECIAL MEETING
PASADENA CITY BOARD OF EDUCATION
UNIFIED AND JUNIOR COLLEGE DISTRICTS

THURSDAY, MAY 4, 1967

Meeting No. 59 — Page No. 16,624

The Pasadena City Board of Education, acting as the Governing Board of the Pasadena Unified School District and the Pasadena City Junior College District, met in Special Session on Thursday, May 4, 1967, at its regular place of meeting 351 South Hudson Avenue, Pasadena, California.

The President called the meeting to order at 3:43 p.m.

The following members were present:

Mr. James N. Stivers, Jr., President
Dr. Joseph J. Engholm
Dr. Robert G. Freeman
Mrs. LuVerne LaMotte
Mr. Steven Salisian

The following administrative officers were present:

Dr. Paul B. Salmon, Superintendent of Schools; Secretary to the Board of Education; Miss Grace M. McFarland, Assistant Superintendent for Elementary Schools; Mr. George W. Norene, Assistant Superintendent for Secondary Schools; Mrs. Louise C. Tingey, Administrative Assistant to the Superintendent.

Board Report.

The following report attached hereto and made a part hereof, as if fully set forth herein, was presented by the Superintendent and action thereon was taken as indicated:

20-H.

Subject: Amendment to Board Report 19-H, dated April 25, 1967—Instructional Trip.

Motion.

On Motion of Dr. Freeman, seconded by Dr. Engholm, by unanimous vote of the five-member Board, Board Report Number 20-H was approved as recommended by the Superintendent and made the action of the Board.

High School Districting.

The Superintendent stated that he would begin immediately to devise the procedure for the development of the long-range program. In the meantime, he hoped that a decision would be reached so that the staff could proceed with the scheduling of students for next year.

Mr. Stivers opened the meeting for discussion from the floor There were no requests to be heard.

The Board members then indicated their preferences with regard to the proposed plans.

Motion.

Dr. Engholm Moved that Plan A be adopted for the interim period during the development of the long-range program. The motion was seconded by Mrs. LaMotte.

After some further discussion, the President called for the question. The Motion was approved by vote of 4 to 1, and it was made the action of the Board. (Mr. Salisian cast the dissenting vote.)

The Superintendent stated that he would have a report on the additional transportation cost to implement Plan A. However, he pointed out that other factors would probably offset the additional cost, thereby cutting down the net increase. He also reported on the proposed sibling policy which would be presented formally at the next Board meeting.

Audience Discussion.

Mr. Stivers opened the meeting for discussion from the floor.

Mr. Stephen E. Ellerbe, 2459 Morslay Road, Altadena, stated that he was disappointed with the Board's action and said that its legality would be tested to determine if any laws had been violated.

Adjournment.

There being no further business to come before the Board, the meeting was adjourned at 4:35 p.m.

/s/ PAUL B. SALMON,
Paul B. Salmon,
Secretary to the Board of Education

MR. JAMES N. STIVERS, JR.,
President of the Board of Education

Pasadena City Schools
Department of Research

May 4, 1967

Explanation for Revised Figures in Board Directed Plan A

The total number of junior high students in the Noyes Elementary area is 188. Included in the proposed transfer to Muir were 7 students already assigned to Muir on the basis of present boundaries. Actually only 181 additional students from the Noyes area should have been transferred to Muir under Board Directed Plan A. The difference of 7 students is accounted for by the fact that the Noyes Elementary boundary and Muir-PHS boundary do not coincide in the northwest corner of the Noyes Elementary area. Consequently, 7 junior high students in the Noyes area already assigned to Muir were counted as though they were junior high school students who would be transferred to Muir.

The Burbank Elementary area within the Eliot Junior High area has 222 junior high students. Under present senior high districting, 41 of these students are already assigned to Muir leaving a balance of 181 students in this area of proposed transfer. The difference of 41 students is accounted for by the fact that the Burbank Elementary boundary between Calaveras and New York Drive does not coincide with the Muir-PHS boundary. The west boundary for Burbank Elementary between Calaveras and New York Drive is on Mar Vista while the high school boundary is on Hill. As a result, 41 junior high school students in the Burbank Elementary area, already in the Muir High School area, were included erroneously among the number of junior high school students in the Burbank area suggested for transfer.

The corrected figures (number of junior high students) in the areas suggested for transfer by Board Directed Plan A are as follows:

Noyes		181
Burbank	Portion in Eliot	181
Burbank	Portion in Marshall	90
	Total	452

The figures for Plan III area correct as originally reported. The corrected figures for Muir and PHS area given on the attached *Plan A With Corrected Figures.* There is no change for Blair.

BOARD DIRECTED PLAN A

With CORRECTED Figures for Muir and PHS

May 4, 1967

Present Selected and Controlled Open District area unchanged.

Present zones to remain the same with the following amendments:

All of Noyes Elementary area to Muir
All of Burbank Elementary area to Muir

Students from the Selected and Controlled Open District area would, according to present policy, complete choice cards and would be given choice indicated until enrollment limit of school selected was reached. Assignments then would be made on a "mandated" basis according to school plant enrollment limits at one of the other two high schools.

Enrollment limits were determined by the Committee.

High School	Total Enrollment	Caucasian		Negro		Others	
		No.	Percent	No.	Percent	No.	Percent
Blair Area	1,376	924	67.2	190	13.8	262	19.0
From Open District	124	13		95		16	
Total	1,500	937	62.5	285	19.0	278	18.5
Muir Area	2,543	1,688	66.4	598	23.5	257	10.1
From Open District	20	2		15		3	
Total	2,563	1,690	65.9	613	23.9	260	10.2
PHS Area	2,452	2,317	94.5	9	0.4	126	5.1
From Open District	748	82		575		91	
Total	3,200	2,399	75.0	584	18.2	217	6.8
Total	7,263	5,026	69.2	1,482	20.4	755	10.4

BOARD DIRECTED PLAN B

May 2, 1967

Present Selected and Controlled Open District area unchanged.

Present zones to remain the same with the following amendments:

Move the present western boundary line of Pasadena High School eastward as follows: from a projected line north of the intersection of Loma Alta Drive and Pine Crest Drive southwesterly on Pine Crest Drive to the center line of N. Allen Avenue and continue southerly on the center line of N. Allen Avenue to E. Mountain Street. Continue on the present southwestern boundary line of Pasadena High School.

Extend Blair High School's northern boundary line on E. Mountain Street from N. Sierra Bonita Avenue to N. Allen Avenue.

Students from the Selected and Controlled Open District area would, according to present policy, complete choice cards and would be given choice indicated until enrollment limit of schools selected was reached. Assignments then would be made on a "mandated" basis according to school plant enrollment limits at one of the other two high schools.

High School	Total Enrollment	Caucasian No.	Caucasian Percent	Negro No.	Negro Percent	Others No.	Others Percent
Blair Area	1,447	993	68.6	188	13.0	266	18.4
From Open District	53	6		41		6	
Total	1,500*	999	66.6	229	15.3	272	18.1
Muir Area	2,462	1,595	64.8	602	24.4	265	10.8
From Open District	101	11		77		13	
Total	2,563*	1,606	62.7	679	26.5	278	10.8
PHS Area	2,462	2,341	95.1	7	0.3	114	4.6
From Open District	738	80		567		91	
Total	3,200*	2,421	75.7	574	17.9	205	6.4
Total	7,263	5,026	69.2	1,482	20.4	755	10.4

* Enrollment limits indicated above were determined by the Committee.

EXHIBIT 15.

MINUTES OF THE REGULAR MEETING
PASADENA CITY BOARD OF EDUCATION
PASADENA UNIFIED SCHOOL DISTRICT

Tuesday, March 19, 1968

Meeting No. 53 — Page No. 16,910

The Pasadena City Board of Education, acting as the Governing Board of the Pasadena Unified School District, met in Regular Session on Tuesday, March 19, 1968, at its regular place of meeting, 351 South Hudson Avenue, Pasadena, California.

The President called the meeting to order at 3:00 p.m.

The following members were present: Mr. Steve Salisian, President; Dr. Joseph J. Engholm, Vice President; Mr. Bradford C. Houser; Mrs. LuVerne LaMotte; Mr. John T. Welsh (arrived at 3:15 p.m.)

* * * * *

Interim Policy for Incoming Open District Students.

It was the consensus of the Board that, during the interim period until a permanent attendance policy for Open District students has been developed and approved, the Superintendent assign all incoming Negro students residing in the Open District area to Pasadena High School and all other incoming students residing in the Open District to Muir High School.

EXHIBIT 16

BEST COPY AVAILABLE

EXHIBIT 16

PASADENA CITY SCHOOLS
Department of Research
October 12, 1966

ELEMENTARY SELECTED OPEN DISTRICT

Receiving Schools	Total	Number of Pupils 1966-67 C	N	O	1964-65 Requests Renewed for 1966-67 C	N	O	1965-66 Requests Renewed for 1966-67 C	N	O	New in 1966-67 C	N	O	Sending Schools
Audubon	1	1	-	-	1	-	-	-	-	-	-	-	-	Franklin
Burbank	8	-	3	-	-	5	-	-	1	-	-	2*	-	Cleveland
Cleveland	16	-	3	-	-	-	-	-	2	-	-	1*	-	Lincoln
		-	13	-	-	-	-	-	11	-	-	2*	-	Washington
Don Benito	3	-	3	-	-	-	-	-	3	-	-	-	-	Washington
Field	4	1	1	-	-	-	-	-	-	-	1	1	-	Franklin
		-	2	-	-	-	-	-	-	-	-	2	-	Washington
Garfield	17	-	11	6	-	2	2	-	2	4	-	7	-	Lincoln
Hale	5	-	-	1	-	-	-	-	-	-	-	-	1	Jackson
		-	4	-	-	-	-	-	-	-	-	4	-	Washington
McKinley	12	-	-	1	-	-	-	-	-	-	-	-	1	Cleveland
		-	-	4	-	-	3	-	-	-	-	-	1*	Garfield
		-	2	-	-	2	-	-	-	-	-	-	-	Lincoln
		-	-	1	-	-	1	-	-	-	-	-	-	Madison
		3	-	-	-	-	-	-	-	-	3	-	-	Madison
		-	1	-	-	1	-	-	-	-	-	-	-	Washington
Webster	24	1	4	-	1	2	-	-	2	-	-	-	-	Cleveland
		-	3	-	-	2	-	-	-	-	-	1*	-	Jackson
		-	2	-	-	-	-	-	2	-	-	-	-	Lincoln
		1	-	-	-	-	-	1	-	-	-	-	-	Madison
		1	11	1	1	6	-	-	5	1	-	-	-	Washington
Total	90	3	68	14	3	20	6	1	28	5	4	20	3	

* Sibling relationship. Permit granted because a permit had been granted previously to older brother or sister.

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Pasadena City Schools
Department of Research

December 1967

ELEMENTARY SELECTED OPEN DISTRICT

Receiving Schools	C	N	O	Total
Audubon	1	—	—	1
Burbank	—	9	—	9
Cleveland	—	12	—	12
Don Benito	—	3	—	3
Field	—	2	—	2
Garfield	—	2	—	2
Hale	—	3	2	5
McKinley	—	1	5	6
Webster	4	17	1	22
Total	5	49	8	62

The above is a summary at the beginning of the 1967-68 school year, the fourth year of Elementary Transfers under Plan VI.

On account of double sessions and utilization of all available spaces in all schools during the 1967-68 school year, there were no spaces available for any new transfers except siblings of pupils previously transferred.

EXHIBIT 35.

Pasadena Unified School District,
Division of Elementary Schools,
351 South Hudson Avenue,
Pasadena, California 91109,

June 19, 1969.

On July 30, 1968, the Pasadena Board of Education approved a policy to further improve the ethnic distribution in our schools. The policy is as follows:

Open Transfer Policy:

"Any student in the elementary, junior, or senior high school of the district may transfer from his home school to any other school in the district under the following conditions:

"a. That he will provide for his own transportation.

"b. That there is an available space open at the receiving school.

"c. That the ethnic balance will be improved in both the sending and receiving schools by the transfer.

"This policy replaces and supersedes other existing policies provided for volunteer transfer of students within the district with the the exception of voluntary participation in the Lincoln Magnet School Project."

On the basis of predicted enrollment, it has been determined that the following schools will have room(s) available in September, 1969.

School	Address	City
Cleveland	524 Palisade Street	Pasadena
Don Benito	3700 Denair Street	Pasadena
Field	3600 Sierra Madre Blvd.	Pasadena
Willard	301 S. Madre Street	Pasadena

Parents interested in registering their children in any of the schools listed above may apply for a transfer at their local school until June 30, from 8:00 a.m. until 4:30 p.m. However, during the summer months, applications will be accepted at the Education Center, Permit Office, Room 225.

If you have any questions, please call the Division of Elementary Schools, 795-6981.

No Application for Open District Transfer Will Be Accepted After October 1, 1969.

EXHIBIT 42(b).

Pasadena Unified School District,
Division of Elementary Schools,
351 South Hudson,
Pasadena, California 91109.

INTRA-DISTRICT ANNUAL REPORT 1968-1969.

Open Transfer Permits 2

Lincoln Magnet School Permits 9

EXHIBIT 68(e).

IIB
2c.

October 8, 1965—Department of Records.

JR. HIGH SCHOOLS-SELECTED OPEN DISTRICT,
STUDENTS ATTENDING MARSHALL JR. HIGH.

	C	N	O	Total
Grade 7	5	30	5	40
Grade 8	6	12	1	19
Total	11	42	6	59
	19%	71%	10%	

Pasadena City Schools
Department of Research

November 2, 1966

JUNIOR HIGH SELECTED OPEN DISTRICT
WASHINGTON TO MARSHALL 1966-67

	C	N	O	Total
Grade 7				
Selected Open District	9	20	2	31
Plan VI*	2	3	—	5
Sub-total	11	23	2	36
	30%			
Grade 8				
Selected Open District	8	17	4	29
Plan VI*	1	4	—	5
Sub-total	9	21	4	34
Grade 9				
Selected Open District	9	8	—	17
Total				
Selected Open District	26	45	6	77
Plan VI*	3	7	—	10
Total	29	52	6	87
	33%	60%	7%	

* Elementary pupils who attended an elementary school within the Marshall Junior High area who are permitted by policy to attend Marshall Junior High.

Pasadena City Schools
Department of Research

December 1967

JUNIOR HIGH SELECTED OPEN DISTRICT
WASHINGTON TO MARSHALL 1967-68

	C	N	O	Total
Grade 7				
Selected Open District	6	12	2	20
Plan VI*	1	3	—	4
Sub-total	7	15	2	24
Grade 8				
Selected Open District	7	19	2	28
Plan VI*	2	3	—	5
Sub-total	9	22	2	33
Grade 9				
Selected Open District	5	14	3	22
Plan VI*	1	4	—	5
Sub-total	6	18	3	27
Total				
Selected Open District	18	45	7	70
Plan VI*	4	10	—	14
Total	22	55	7	84
	26%	65%	9%	

* Elementary pupils who attended an elementary school within the Marshall Junionr High area who are permitted by policy to attend Marshall Junior High.

EXHIBIT 68E(c).

Pasadena, California,
Pasadena Unified School District,
Office of the Superintendent of Schools,

June 11, 1964.

GEOGRAPHIC AND CONTROLLED OPEN DISTRICTING.

Information Sheet.

For the 1964-65 School Year Only—See Note on back side.

On May 12, 1964, the Pasadena Board of Education approved the Superintendent's recommendation that a Plan for Elementary Districting and Intergroup Education be approved. Section A., Points 1. and 2. of Plan VI reads as follows:

"1. All elementary children living within any of the present elementary districts would be assured a seat in the school serving that district area.

2. Parents in designated elementary schools would be permitted to register their children in any school where there are empty classrooms or empty seats, with transportation provided on any of the existing bus routes, if there is room on the bus; otherwise, transportation would be provided by the parents. Tentatively, the elementary schools designated for this option possibility would be in the more densely populated area which would include Franklin, Jackson, Washington, Cleveland, Lincoln, Madison, and Garfield. Options could also be permitted for children to transfer from any of the other schools to the schools in the Selected Open District designated area if there were seats available following the options that were first taken by parents in any one of the seven schools in the more densely populated area."

Rooms Available for Elementary School Transfer.

Parents interested in registering their children in any of the schools listed on the next page may apply any time between June 17 and June 30, 1964, providing they reside in the Cleveland, Garfield, Franklin, Jackson, Lincoln, Madison, or Washington Elementary school zones, and providing that their children are in grades one through six.

Parents must apply for transfer at the school were the pupil wishes to attend.

NOTE: On the basis of End-of-First School Month enrollment estimates for the 1964-65 school year, the following elementary schools will have rooms available. Enrollment changes in the areas of specific schools may necessitate changes because some schools may no longer have rooms available while other schools may be added.

School	Address	City
Luther Burbank	2046 N. Allen Avenue	Altadena
Don Benito	3700 Denair Street	Pasadena
Eugene Field	3600 Sierra Madre Blvd.	Pasadena
Alexander Hamilton	2089 Rose Villa Street	Pasadena
William McKinley	330 South Oak Knoll Avenue	Pasadena
Sierra Mesa	160 N. Canon Avenue	Sierra Madre
Daniel Webster	2101 E. Washington Blvd.	Pasadena

Availability of Seats When Less Than One Room Is Available.

Because of population mobility within the school district, it is impossible at this time to estimate location of available seats on less than one classroom basis until the end of the second school week in September.

Information relative to seats available will be distributed to all parents residing in the Cleveland, Garfield, Franklin, Jackson, Lincoln, Madison, and Washington Elementary school zones during the third week of school, September 28-October 2, 1964.

Available seats will be determined on the basis of Board of Education Policy relative to pupil/teacher ratio.

1. The Policy or pupil/teacher ratio is 30 to 1 for each school.
2. Class maximum at any grade level will be held at 30 to 1 for determining availability of seats at any grade level.
3. In a combination-grade class, separation into single classes will be considered if an additional teacher and space are available at the school and requests for transfer from other schools seem to warrant opening of additional seats.

Determination of availability of seats will be made by the principal at each elementary school subject to review by the Assistant Superintendent for Elementary Schools.

Pasadena Unified School District,
Office of the Superintendent of Schools,
Pasadena, California,

May 26, 1965.

GEOGRAPHIC AND CONTROLLED OPEN DISTRICTING
INFORMATION SHEET.

On May 12, 1964, the Pasadena Board of Education approved the Superintendent's recommendation that a Plan for Elementary Districting and Intergroup Education be approved. Section A., Point 2 of Plan VI reads as follows:

> "2. Parents in designated elementary schools would be permitted to register their children in any school where there are empty classrooms or empty seats, with transportation provided on any of the existing bus routes if there is room on a bus; otherwise, transportation would be provided by the parents. Tentatively, the elementary schools designated for this option possibility would be in the more densely populated area which would include Franklin, Jackson, Washington, Cleveland, Lincoln, Madison, and Garfield. Options could also be permitted for children to transfer from any of the other schools to the schools in the Selected Open District designated area if there are seats available following the options that were first taken by parents in any one of the seven schools in the more densely populated area."

To implement the policy for the second year, the following procedure has been established:

1. *Present Open District Transfers:*

   Pupils who reside in the geographic and controlled open district who are now attending schools out-of-district must request a renewal of the present transfer permit.

   Parents Must Apply for Renewal Transfers at the School Where the Pupil Has Been Attending.

2. *Registration for New Open District Transfers:*

   Parents interested in registering their children in any of the schools listed on page two may apply for transfers any time up to and including June 11, ... providing they reside in the Cleveland, Franklin, Garfield, Jackson, Lincoln, Madison, or Washington school zones, and providing their children will be in grades one through six next year.

   No Permits Will Be Accepted After June 11
   No Permits Will Be Accepted in September.

All requests for transfer permits *must* be made before and including June 11.

Children who reside within or outside the Open District, providing they will be in grades one through six, may attend either Garfield or Cleveland School.
Parents Must Apply for Transfers at the School Where the Pupil Wishes to Attend.

Parents must agree to the following:

1. Transportation will be furnished only if there is room on existing school bus lines.
2. Pupils will be expected to remain through the sixth grade at the school to which a transfer is requested unless the parents move from the Open District school zones.

   Exception: If the enrollment within the district of a receiving school increases and seats are no longer available, it may become necessary to cancel transfer permits from the Open District. Cancellations would be made only at the close of a school year and prior notices would be given.
3. Emergency cards must be on file and up-to-date at all times.

On the basis of present enrollment and in accordance with the Board of Education policy relative to pupil/teacher ratio,

it has been determined that seats are available at the following schools:

Receiving Schools	Address
Cleveland	524 Palisade Street, Pasadena
Don Benito	3700 Denair Street, Pasadena
Field	3600 Sierra Madre Blvd., Pasadena
Garfield	540 So. Pasadena Avenue, Pasadena
Webster	2101 E. Washington Blvd., Pasadena

For further information, please call the office of the Assistant Superintendent for Elementary Schools, 795-6981.

GRACE M. MCFARLAND,
Assistant Superintendent,
for Elementary Schools.

Pasadena Unified School District
Office of the Superintendent of Schools
Pasadena, California

June 15, 1966

INFORMATION ON GEOGRAPHIC AND CONTROLLED OPEN DISTRICTING.

To implement the Geographic and Controlled Open Districting Policy for 1966-67, the following procedure has been established:

1. *Present Open District Transfers*
   Pupils who reside in the geographic and controlled open district and are now attending schools out-of-district must renew present transfer permits. Parents Must Apply for Renewal Transfers at the School of Present Attendance.

2. *Registration for New Open District Transfers*
   Parents may register their children in any of the schools listed below providing they reside in the Cleveland, Franklin, Garfield, Jackson, Lincoln, Madison, or Washington elementary school zones, and providing their children will be in grades one through six next year. *Before June 30* parents may apply for a transfer at the school the pupil wishes to attend. From *July 1 through July 29, 1966* they may apply at the Division of Elementary Schools, Rm. 222, Education Center, 351 South Hudson. *No applications will be accepted in September.*

Parents must agree to the following:

1. Transportation will be furnished *only* if there is room on existing school bus lines.
2. Pupils will be expected to remain through the sixth grade at the school to which a transfer is requested unless the parents move from the Open District school zones.

Exception: If the enrollment within the district of a receiving school increases and seats are no longer available, it may become necessary to cancel transfer permits from the Open District. Cancellations would be made only at the close of the school year and prior notices would be given.

3. Emergency cards must be on file and up-to-date at all times.

On the basis of present enrollment and in accordance with the Board of Education policy relative to pupil/teacher ratio, it has been determined that seats are available at the following schools:

Receiving Schools	*Address*
Don Benito	3700 Denair Street, Pasadena
Field	3600 Sierra Madre Blvd., Pasadena
Hale	2550 Paloma Street, Pasadena
Garfield	540 So. Pasadena Avenue, Pasadena

For further information, please call the office of the Assistant Superintendent for Elementary Schools, 795-6981.

GRACE M. MCFARLAND
Assistant Superintendent
for Elementary Schools

EXHIBIT PA-VI.

Pasadena City Schools
Department of Research

January 2, 1969

Memorandum

To: Mr. Ralph W. Hornbeck

From: Joseph T. Hanson

Subject: Effect of Senior High School Selected Open District on Ethnic Distribution

You have asked for an "evaluation" of the Senior High School Selected Open District Plan. The only evaluation we can give is the probable ethnic distribution at the three high schools after the plan had been operating three years, 1967-68, and four years, 1968-69. It should be remembered that the entire Senior High School Selected Open District was carved out of the Muir attendance zone. Consequently, it is logical that, without the Selected Open District, all or most of the students residing in the Selected Open District would have been in attendance at Muir. This, of course, would have reduced the enrollment at Blair to the point that it would have been necessary to enlarge the Blair area eastward to include most or all of the Willard Elementary School area—a plan which was actually considered at the time the Blair area was being planned.

Enclosures 1-A and 1-B are the figures for 1967-68. Enclosure 1-A is page 13 from Research Report 267 for 1967-68, "Racial and Ethnic Distribution of Enrollment in Senior High School Areas." Enclosure 1-B is a report of assignments from the Selected Open District for the 1967-68 school year. It will be noted (Encl. 1-B) that Blair was assigned 240 over a three-year period and Pasadena High School was assigned 342 over a three-year period—a total of 582. If we had not had

the Selected Open District, these students (73 Caucasian, 431 Negroes and 78 Others) would have been attending Muir. If these figures are subtracted from Blair and Pasadena High School respectively and added to Muir (see Encl. 1-A) it will be noted that the distribution of Negro students would have been Blair —11.7%, Muir—45.1%, and PHS—.9%. Consequently, it may be concluded that Muir would have had a Negro student enrollment of 45.7% in 1967-68 had the Selected Open District students not been assigned to Blair and PHS as they were. It should be kept in mind that, had more Caucasian students been assigned to Blair from the Willard area, the proportion of Negro students at Blair would have decreased somewhat because the number of Caucasian students would have increased and the total number of students would also have increased, thereby decreasing the percent of Negro students although the number of Negro students would have remained the same. The effect would have been the reverse at PHS, a very slight increase in the proportion of Negro students on account of a drop in total enrollment.

Enclosures 2-A and 2-B are the figures for 1968-69. Enclosure 2-A is page 13 from Research Report 274 for 1968-69, "Racial and Ethnic Distribution of Enrollment in Senior High School Areas." Enclosure 2-B is a report of assignments from the Selected Open District for the 1968-69 school year. It will be noted (Encl. 2-B) that Blair was assigned 243 over a three-year period and Pasadena High School was assigned 375 over a three-year period—a total of 618. If we had not had the Selected Open District, these students (51 Caucasian, 517 Negroes and 50 Others) would have been attending Muir. If these figures are subtracted from Blair and Pasadena High School respectively and added to Muir (see Encl. 2-A) it will be noted that the distribution of Negro students would have been Blair—8.7%, Muir—48.1%, and PHS—.8%. Consequently, it may be concluded that Muir would have had a Negro student enrollment of 48.1% in 1968-69 had the Selected Open

District students not been assigned to Blair and PHS as they were. It should be kept in mind that, had more Caucasian students been assigned to Blair from the Willard area, the proportion of Negro students at Blair would have decreased somewhat because the number of Caucasian students would have increased and the total number of students would also have increased, thereby decreasing the percent of Negro students although the number of Negro students would have remained the same. The effect would have been the reverse at PHS, a very slight increase in the proportion of Negro students on account of a drop in total enrollment.

Because of changes in the State Testing Program, there is (with one minor exception) no way in which the Selected Open District procedure can be evaluated on the basis of test results. The exception is the second year in which the Senior High School Selected Open District was in effect (1965-66). Our testing program had specified achievement testing in the twelfth grade but the State program moved this testing down into the eleventh grade. A comparison of test results (Iowa Tests of Educational Development) indicated that the eleventh grade Selected Open District students attending Pasadena High School scored slightly higher on some of the tests than did the eleventh grade Selected Open District students who were attending Muir. The difference was not statistically significant and must therefore be considered a chance difference only, which would be due to non-measurable differences between the two groups. For example, the students who "volunteered" to attend PHS may have been students with a greater degree of motivation. Furthermore, there is no way of knowing whether or not these students would have done less well, as well, or better had they continued to attend Muir High School. Because of the procedure used in asking for volunteers, using various "pressures" to obtain volunteers and finally mandating a portion of students to PHS, there was no way of setting up control groups which could be used in a sound comparison of test results. The following year (1966-67) the State Depart-

ment of Education moved required testing down to the second month of the tenth grade, thereby eliminating test results as a basis for evaluation in 1966-67 and subsequent years. The latest State Testing Program added new tests to the tenth grade because our own faculty wished to continue the ITED in the tenth grade for diagnostic and program purposes. The Preliminary Scholastic Aptitude Testing program in the tenth grade, the Scholastic Aptitude Testing program in the twelfth grade, Merit Scholarship Testing, Advance College Placement Testing, etc. have placed burdens on staff to the extent that it has not been practical on the basis of student and teacher time to continue additional achievement testing in the eleventh and twelfth grade when not required by the State Department of Education. The net result is that effectiveness of Senior High School Selected Open District cannot be evaluated on the basis of achievement test results.

/s/ J. T. H.
J. T. H.

JTH:ds
Enclosures

1967-68

RIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT IN SENIOR HIGH SCHOOL AREAS - continued

	Total	Caucasian No.	Diff.	Per Cent	% Chge.	Negro No.	Diff.	Per Cent	% Chge.	Others No.	Diff.	Per Cent	% Chge
BLAIR													
64-65	458[a]	288		62.9		100		21.8		70		15.3	
65-66	863[b]	504		58.4		198		22.9		161		18.7	
			+216		-4.5		+98		+1.1		+91		+3.
t. 1966	1297[c]	789		60.8		286		22.1		222		17.1	
			+285		+2.4		+88		-0.8		+61		-1.
t. 1967	1426	853		59.8		318		22.3		255		17.9	
	-240	-30	+64		-1.0	-177	+32		+0.2	-31	+33		+0.
	1186	823		69.4		139		11.7		224		12.7	
MUIR													
58-59	2849	2298		80.7		391		13.7		160		5.6	
61-62	2867	2220		77.4		469		16.4		178		6.2	
			-78		-3.3		+78		+2.7		+18		+0.
62-63	3039	2150		70.8		663		21.8		226		7.4	
			-70		-6.6		+204		+5.4		+48		+1.
63-64	2750[d]	1740		63.3		726		26.4		284		10.3	
			-410		-7.5		+63		+4.6		+58		+2.
64-65	2335[e]	1374		58.8		684		29.3		277		11.9	
			-366		-4.5		-42		+2.9		-7		+1.
65-66	2277	1341		58.9		646		28.4		290		12.7	
			-33		+0.1		+38		-0.9		+13		+0.
t. 1966	2079	1132		54.4		677		32.5		270		13.0	
			-209		-4.5		+33		+4.2		-20		+0.
1967	2098	1039		49.5		795		37.9		264		12.6	
	+532	+ 73	-93		-4.9	+431	+210		+5.3	+78	-6		-0.
	2180	1112		41.5		1226		45.7		342		12.8	
PASADENA													
58-59	1920[f]	1776		92.5		57		3.0		87		4.5	
61-62	3371	3123		92.6		74		2.2		174		5.2	
			+1347		+0.1		+17		-0.8		+87		+0.
62-63	3638	3312		91.0		100		2.8		226		6.2	
			+189		-1.6		+26		+0.6		+52		+1.
63-64	3771	3434		91.1		94		2.5		243		6.4	
			+122		+0.1		-6		-0.3		+17		+0.
64-65	3635	3227		88.8		197		5.4		211		5.8	
			-207		-2.3		+103		+2.9		-32		-0.
65-66	3450	3059		88.7		225		6.5		166		4.8	
			-168		-0.1		+29		+0.1		-45		-1.
t. 1966	3457	2994		86.6		274		7.9		189		5.5	
			-65		-2.1		+49		+1.4		+23		+0.
t. 1967	3407	2936		86.2		280		8.2		191		5.6	
	- 342	-43	-58		-0.4	-252	+6		+0.3	- 47	+2		+0.
	3065	2893		94.4		27		0.9		145		4.7	

[a] Grade 10 only
[b] Grades 10 and 11
[c] Grades 10, 11 and 12
[d] Drop due to La Canada withdrawal of 10th and 11th grade students
[e] Part of drop due to graduation of La Canada 12th grade students
[f] Eleventh and twelfth grades only on Pasadena City College Campus

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PASADENA CITY SCHOOLS
Department of Research
December 196[illegible]

SENIOR HIGH [illegible]ENROLLED GRADE DISTRICT

SCHOOL	TOTAL	Caucasian No.	Caucasian Per cent	Negro No.	Negro Per cent	Others No.	Others Per cent
Grade 10							
Blair	91	8	8.8	70	76.9	13	14.3
Muir	71	7	9.9	50	70.4	14	19.7
Pasadena	144	23	16.0	106	73.6	15	10.4
TOTAL	306	38	12.4	226	73.9	42	13.7
Grade 11							
Blair	62	9	14.5	47	75.8	6	9.7
Muir	100	11	11.0	77	77.0	12	12.0
Pasadena	116	11	9.5	89	76.7	16	13.8
TOTAL	[illegible]	31	[illegible]	213	75.5	34	12.0
Grade 12	1425						
Blair	87	13	[illegible]	62	71.3	12	13.8
Muir	116	9	7.8	89	76.7	18	15.5
Pasadena	82	9	[illegible]	57	69.5	16	19.5
TOTAL	285	31	[illegible]	208	73.0	46	16.0
TOTAL							
Blair	240	30	[illegible]	179	74.6	31	12.9
Muir	287	27	9.4	216	75.3	44	15.3
Pasadena	342	43	[illegible]	252	[illegible]	47	13.7
TOTAL	869	100	[illegible]	647	74.5	122	14.0

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1965-67

1968-69

SOCIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT IN SENIOR HIGH SCHOOL AREAS[a] - continued

	Total	Caucasian No.	Caucasian Diff.	Caucasian Per Cent	Caucasian % Chge.	Negro No.	Negro Diff.	Negro Per Cent	Negro % Chge.	Others No.	Others Diff.	Others Per Cent	Others % Chge.
BLAIR													
1964-65	458[a]	288		62.9		100		21.8		70		15.3	
1965-66	863[b]	504	+216	58.4	-4.5	198	+98	22.9	+1.1	161	+91	18.7	+3
Oct. 1966	1297[c]	789	+285	60.8	+2.4	286	+88	22.1	-0.8	222	+61	17.1	-1
Oct. 1967	1426	853	+64	59.8	-1.0	318	+32	22.3	+0.2	255	+33	17.9	+0
Oct. 1968	1441	882	+29	61.2	+1.4	311	-7	21.6	-0.7	248	-7	17.2	-0
	-243	-17				-207				-17			
	1198	865		72.2		104		8.7		229		19.1	
MUIR													
1961-62	2867	2220	-78	77.4	-3.3	469	+78	16.4	+2.7	178	+18	6.2	+0
1962-63	3039	2150	-70	70.8	-6.6	663	+194	21.8	+5.4	226	+48	7.4	+1
1963-64	2750[d]	1740	-410	63.3	-7.5	726	+63	26.4	+4.6	284	+58	10.3	+2
1964-65	2335[e]	1374	-366	58.8	-4.5	684	-42	29.3	+2.9	277	-7	11.9	+1
1965-66	2277	1341	-33	58.9	+0.1	646	-38	28.4	-0.9	290	+13	12.7	+0
Oct. 1966	2079	1132	-209	54.4	-4.5	677	+31	32.6	+4.2	270	-20	13.0	+0
Oct. 1967	2098	1039	-93	49.5	-4.9	795	+118	37.9	+5.3	264	-6	12.6	-0
Oct. 1968	1947	956	-83	49.1	-0.4	717	-78	36.8	-1.1	274	+10	14.1	+1
	+618	-51				-517				-50			
	2565	1007		39.3		1234		48.1		324		12.6	
PASADENA													
1961-62	3371	3123	+1347	92.6	+0.1	74	+17	2.2	-0.8	174	+87	5.2	+0
1962-63	3638	3312	+189	91.0	-1.6	100	+26	2.8	+0.6	226	+52	6.2	+1
1963-64	3771	3434	+122	91.1	+0.1	94	-6	2.5	-0.3	243	+17	6.4	+0
1964-65	3635	3227	-207	88.8	-2.3	197	+103	5.4	+2.9	211	-32	5.8	-0
1965-66	3450	3059	-168	88.7	-0.1	225	+28	6.5	+1.1	166	-45	4.8	-1
Oct. 1966	3457	2994	-65	86.6	-2.1	274	+49	7.9	+1.4	189	+23	5.5	+0
Oct. 1967	3407	2936	-58	86.2	-0.4	280	+6	8.2	+0.3	191	+2	5.6	+0
Oct. 1968	3422	2860	-76	83.6	-2.6	334	+54	9.7	+1.5	228	+37	6.7	+1
	-375	-34				-310				-31			
	3047	2826		92.7		24		0.8		197		6.5	

a Grade 10 only
b Grades 10 and 11
c Grades 10, 11 and 12
d Drop due to La Canada withdrawal of 10th and 11th grade students
e Part of drop due to withdrawal of 10th and 11th grade students

PASADENA UNIFIED SCHOOL DISTRICT
Department of Research
December 1968

SENIOR HIGH SELECTED OPEN DISTRICT
ON THE BASIS OF ASSIGNMENT AT TIME OF DRAWING

SCHOOL	TOTAL	Caucasian No.	Caucasian Per cent	Negro No.	Negro Per cent	Others No.	Others Per cent
Grade 10							
Blair	90	-	-	90	100.0	-	-
Muir	56	20	35.7	-	-	36	64.3
Pasadena	115	-	-	115	100.0	-	-
TOTAL	261	20	7.7	205	78.5	36	13.8
Grade 11							
Blair	91	8	8.8	70	76.9	13	14.3
Muir	71	7	9.9	50	70.4	14	19.7
Pasadena	144	23	16.0	106	73.6	15	10.4
TOTAL	306	38	12.4	226	73.9	42	13.7
Grade 12							
Blair	62	9	14.5	47	75.8	6	9.7
Muir	100	11	11.0	77	77.0	12	12.0
Pasadena	116	11	9.5	89	76.7	16	13.8
TOTAL	278	31	11.2	213	76.6	34	12.2
TOTAL							
Blair	243	17	7.0	207	85.2	19	7.8
Muir	227	38	16.7	127	56.0	62	27.3
Pasadena	375	34	9.1	310	82.7	31	8.2
TOTAL	845	89	10.5	644	76.2	112	13.3

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123068 Res. JTH:va

[241] **TRANSCRIPT OF PROCEEDINGS.**

January 7, 1970.

Volume 2, Page 241.

PAUL B. SALMON, called as a witness on behalf of the plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: Will you please take the witness stand.
For the record, will you please state your name.
The Witness: Paul B. Salmon, S-a-l-m-o-n.

* * * * *

[244] [In] March of 1967 * * * I was selected as superintendent of the Pasadena Unified School District in Los Angeles County.

I served from March of '67 to November 1, 1968 in that capacity. On November 1, 1968 I became superintendent in my present position.

* * * * *

[245] By Mr. Quaintance:

* * * * *

Q. When you came to the district, what form of desegregation plan was in effect?

A. There were two plans. At the high school level there was a plan called the geographically controlled open district, which removed certain predominantly minority students from the central portion of Pasadena to Pasadena High School. This plan had been put into effect I believe in 1963.

* * * * *

[246] Q. Referring to Exhibit 10-M, the area referred to is labeled as the open district, is that correct?

A. Yes, sir.

Q. Was that in a majority black residential area of Pasadena?

A. As I recall it at the time, it was approximately 80 percent black.

Q. And how did that plan operate at the senior high school level?

A. Each year, tenth graders or those entering the tenth grade from the ninth grade of the junior high school serving that area were requested to indicate their first and second choice of high schools to attend. When we received those choices, we then matched them against the seats that had been identified as being available in the Muir High School, the Pasadena High School and the Blair High School.

Students who had brothers or sisters attending either of or any of the high schools had preferential seating. Then came the first choice, [247] then the second choice and of course, if a student couldn't receive either his first or second choice, he was assigned to the remaining high school.

Q. Did that apply equally to white and black students and other students within the open district?

A. Yes, sir. It was a geographically established policy.

* * * *

[248] Q. Dr. Salmon, did the nature of the open district plan at the senior high school change while you were the superintendent?

A. Yes, sir.

Q. Would you describe what that change was.

A. In 1968 a change was made which prevented minority —excuse me a minute—prevented black students from being assigned to Muir High School. Those students were assigned either to Pasadena High School or to Blair High School up to a predetermined percentage standard.

Q. And what was that?

A. As I recall, it was either 23 or 24 percent.

Q. Who proposed that percentage?

A. Mr. Houser.

Q. And was that designed to reflect the percentage of black high school students in the district?

[249] A. I believe it was.

Q. And was it also true that white students and other minority students within the open district would attend Muir High School?

Mr. Miller: I object to the question as leading.

By Mr. Quaintance:

Q. What were white and other students to do in that open district? Where were they to attend school?

A. The Caucasian students in the open district were mandated to attend Muir High School.

Q. Was it or was it not stated by the Board at the time this plan was first under consideration that it was to be an interim plan for senior high schools?

A. As I recall, it was to be an interim plan for senior high schools until a long-range solution could be found.

Q. And was it still in effect when you left the district?

A. Yes, sir.

Q. Was there also a form of open district or open enrollment plan at the junior high school level?

[250] A. There was a plan adopted while I was there that permitted students to transfer from one junior high to another so long as the transfer would improve the ethnic balance in both junior high schools. That plan was adopted, I believe, in 1968.

There was another plan in existence when I went there, went to Pasadena. It was the plan which established ninety available seats at Marshall Junior High School. These seats were available to students from the Washington Junior High School.

[251] 30 such seats per year were available because there were three years—three grade levels in a junior high school.

Q. Were they available both as to white and black students?

A. They were available to people on a first-come first-served basis.

Q. Did you have a term that you used to describe that process?

A. We used to jokingly refer to it as the Oklahoma land rush for seats at Marshall.

Q. At the elementary level was there a form of open enrollment plan in effect in the district?

A. When I first came to the district there was a plan where certain overcrowded sending schools could have students go from those schools to schools in which seats were available, they were receiving schools.

The terms were that there had to be a seat available and that the parent had to provide transportation of the student or the student had to walk.

* * * * *

Q. At the senior high school level was [252] transportation provided?

A. For the open district students, yes.

Q. And at the junior high school level?

A. It was provided for the major portion of the time that I was superintendent but in 1968—excuse me, for the 1969 school year free transportation was eliminated for students participating in that program and they had to provide their own.

* * * * *

[487] January 8, 1970

Volume 3, Page 487.

DR. RALPH HORNBECK, called as a witness on behalf of the plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: Will you please take the witness stand.
For the record, will you please state your name?
The Witness: Ralph Hornbeck.
The Clerk: Would you spell the last name?
The Witness: H-o-r-n-b-e-c-k.

* * * * *

[499] Q. How many such transfers were granted in the most recent year, to your knowledge?

A. I don't have that information here.

Q. Do you know whether last year there were more than two such transfers granted?

Mr. Pollock: Are you talking about elementary schools or schools in general?

By Mr. Quaintance:

Q. The schools thoughout the district.

A. I don't have that information. We have been limited grossly in the implementation of open transfer policies because of the problem of schools being closed due to the Field Act standards and the overcrowding of many schools in Pasadena.

* * * * *

[1292] January 13, 1970.

Volume 5, Page 1292.

LU VERNE LA MOTTE, called as a witness by the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: For the record will you please state your name.
The Witness: My name is LuVerne LaMotte.
The Clerk: Will you spell both names.
The Witness: L-u-V-e-r-n-e L-a-M-o-t-t-e.

Direct Examination by Mr. Roberts.

Q. Mrs. LaMotte, you are one of the defendants and a member of the School Board, correct?

A. Yes, sir.

Q. When were you first elected to the School Board?

A. In 1957.

Q. And have you held office continuously since that time?

A. Yes, I have.

* * * * *

[1307] Q. The question was, what steps were taken toward alleviating the problem. I will ask you later something else.

A. All right.

There were a couple of what I consider rather minor steps.

This was that during this time we reactivated what had formerly been called the La Motte amendment, which came into effect at the time of the open district, when I said if this is the program we ought to make it possible for youngsters from the high school district at Pasadena to attend Muir if they so chose. That was—no, this was not before Mr. Salisian left. And that is what you said, I am sorry.

Yes, it was. I am mixed up on my dates. There was a period of a whole year that Mr. Salisian was on the Board that the La Motte amendment was reinstituted during that same year. A plan which was labeled plan 5 came into effect. This was a designation [1308] that all the open district black students would have to go to PHS or to Blair and all white students in the open district area had to go to Muir.

Q. Could you stop there.

How many white students did that involve, do you know?

A. I don't know, but it is few.

Q. Very few, isn't that the case?

A. Yes.

* * * * *

The Witness: There is one more possible thing that might have occurred, and I don't recall now whether it was before or after Mr. Salisian was on the Board.

And this is that an open transfer policy at all three levels was finally approved. I had begged for some time that an open transfer policy be permitted at the junior high school level as it was at the elementary and high school level. And finally, it had to be sometime in 1968 that this finally became the policy [1309] of the Board, that actually a student living anywhere in the district could transfer to any other school providing he provided his own transportation, provided there was room there and provided it would improve the ethnic balance at both the sending and receiving school.

Q. Other than these measures were there any others taken during the two-year span that you consider effective toward alleviating the imbalance?

A. Not that I recall, no.

Q. Do you feel that these events even in conjunctinon really dealt with the problem on a high level or any substantial way?

A. No.

Q. Would you characterize these plans as more or less stop-gap measures at best?

A. Yes.

* * * * *

[1483] January 14, 1970

Volume 6, Page 1483.

* * * * *

JOHN WELSH, called as a witness by the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: For the record will you please state your name.
The Witness: John Welsh.
The Court: Will you spell the last name, please.
The Witness: W-e-l-s-h.

* * * * *

[1485] Q. You are a member of the Board of the Pasadena Unified School District, are you not?

A. Yes.

Q. And you have been since when?

A. 1967.

* * * * *

[1535] Q. What kind of voluntary programs would you be in favor of?

[1536] A. I think that kind of a program where you are working with people in encouraging them to attend school outside of their area to help this ethnic problem.

I think it is interesting that when you leave it on a voluntary basis I see that parents and students do not choose to leave their neighborhood areas, at least that is what the experience with the opening of the open district was.

* * * * *

[1948] January 16, 1970.

Volume 8, page 1948.

DR. ROBERT JENKINS, called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

The Clerk: Will you please take the witness stand.
For the record, will you please state your name.
The Witness: Robert Jenkins.

* * * * *

[1949] Q. You were Superintendent of Schools in Pasadena during what period of time, sir?

A. For nine years, from 1958 through most of 1967.

* * * * *

[1998] Q. From that point on after that report was submitted then what happened in regard to the integration at the elementary level, Dr. Jenkins?

* * * * *

Then I presented Plan 6. Five plans and then Plan 6. A plan for elementary districting in the intergroup education which included the elementary concept of geographic controlled open districting which all children living within any present elementary district would be assured of a seat in the school.

[1999] And then we took a unique move, for Pasadena, in the 1970s now it doesn't sound like very much but in those days it was unique, and that is one thing I think has to be remembered continuously, this is ten years ago. This was in 1964, it was several years ago.

We said, let's have all the children guaranteed a seat within the elementary school district but let's have sending and receiving schools. Let's encourage children in the sending schools to go to the receiving schools where there are seats and in the

sending schools to be in the west side of the district where they had de facto segregated schools. And we opened up schools over the district where they were not so crowded. I think we ended up with 200, 250 students taking advantage of this.

* * * * *

[2047] Q. You have testified concerning open enrollment and indicated that the receiving schools—how would you characterize the receiving schools?

A. Elementary?

Q. Yes.

A. The receiving schools were schools in different parts of the city and primarily they were in the eastern and southern part of Pasadena area that had room.

[2048] The most densely populated schools on the west side. They were our de facto segregated schools.

This is a way of trying to get some of these students out into the schools that had no minority students.

Q. Cleveland was a receiving school, was it not?

A. I can't recall. Perhaps it was because the addition was on there. I can't recall the details.

Q. Assuming that would be true—

A. If it is true it was.

Q. —how would having Cleveland be a receiving school increase integration?

A. It would increase integration, of course, if students, Caucasian students went to the school.

Q. How many white students do you think chose that school?

A. I don't know. I doubt very many did because there was room in the other schools.

Q. In connection with the open enrollment plan is it accurate to say that a person would be permitted to stay there only so long as space was available; is that correct?

A. That is right.

Q. You have indicated you thought approximately [2049] 250 students availed themselves of the opportunity under—

A. To my best memory.

Q. Would it surprise you if the record shows that number the year you left, 1966-67 school year, was 90?

A. Yes. I think it was up higher than that in previous years.

Q. The highest was 114, would that surprise you?

A. Yes, it would.

Q. A minimum of only 86 were black?

A. Uh-huh.

Q. Were you aware that in 1958-59, the year that you had come to Pasadena, that 76 per cent of the black elementary school students were in majority black schools while, when you left, the figure was still 76 per cent, 76.4?

A. Yes. And still 76 per cent during a period when there was a tremendous increase in the percentage of minority students in Pasadena.

Q. And in 1958-59, 96.7 per cent of the white students were in majority white schools. When you left the figure was still over 95 per cent. Were you aware of that?

A. I think that figure sounds accurate because [2050] we still hadn't found the answer.

* * * * *

[2091] JAMES STIVERS, called as a witness by the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: For the record will you please state your name.
The Witness: James Stivers.
The Clerk: Will you spell the last name.
The Witness: S-t-i-v-e-r-s.
The Clerk: Thank you.

Direction Examination b = Mr. Pollock.

* * * * *

[2092] You served on the Board of the Pasadena Unified School District, did you, at one time?

A. Yes, I did.

Q. Over what period of years did you so serve?

A. 1957 through 19—from 195 through 1967.

Q That covers roughly the same period of time of Dr. Jenkins, then?

A. Yes, I was elected to the Board just slightly after Dr. Jenkins came to Pasadena.

Q. And you left the Board at about the same time he departed from Pasadena?

A. Just a little bit after he left.

* * * * *

[2100] Q. Would you tell us about your involvement and your views?

A. The first time that we received the report of the committee we had scheduled a meeting of the board as we were attempting to do so within the community and heard the report. And as has been previously announced there were no comments about the report other than the commendation to the committee for the excellent job that they had done and for the many numbers of hours that they had spent in the work.

Subsequent to that we held two or three other meetings to discuss the findings of the committee. We immediately asked the County Counsel, ours was a board and a superintendent that depended greatly on counsel, County Counsel was our counsel. We asked them for guidelines and opinion on every matter.

We sent the report immediately to County Counsel along with comments that we had received from others and asked them to evaluate the comments that we had received from the board members, that is what I am referring to, not from outsiders.

Q. All right.

A. And asked them to evaluate it for us and give us an opinion.

We received information from Harold Kennedy [2101] that his staff was finding it difficult to determine that the recommendation made by the citizens committee could be found legal. And Dr. Jenkins and I immediately dropped everything else that we were working on and spent almost full time on it.

We immediately set up a meeting with Harold Kennedy and said we have got to do something that we can work with.

* * * * *

A. During that same period then, and partly at the suggestion of Harold Kennedy, he said that he had to have some alternatives to look at if he would be able to come up with any positive declarations rather than negative ones.

And so then we began to develop other ways of investigation.

We came up, among others, with the selected and controlled open district. And the first time that we did this and the first one that we sent over to Harold Kennedy contemplated the selection of students from the selected open district on the basis of race.

Q. What do you mean by that, sir; would you [2102] explain.

A. That all black students from the open district would be sent to Pasadena High School and that all white students from the open district would be sent to Muir.

We sent that to Harold Kennedy for an opinion. He again, before writing it down, notified us that they would have to find the same conditions prevalent as they did in the plan that had been presented by the citizens group.

Q. How much was this after the June 7, 1963 opinion letter?

A. This was before the June 7 letter.

Q. Before that. All right.

A. The June 7 letter contained three opinions.

One was on the plan that was recommended by the citizens committee which they found to be illegal. The second opinion was on the selected and controlled open district on the basis of race which they found to be illegal. The third was on the selected and controlled open district without reference to race which they found to be legal. It was only because we stayed with that that we were able to come up with one.

The minutes of that meeting, of the June 11 meeting I believe it was, where the June 7 letter was [2103] introduced in public reflects that I made a statement at that time that we were terribly depressed when we discovered that the opinions from County Counsel appeared to be totally negative. And that we worked with County Counsel with full and complete co-operation of that office in order to find a way to have a positive opinion presented at the same time.

* * * * *

[2107] Q. The record in this case shows that the selected open district area is an area composed substantially of Negro population. Were you aware of that at the time when the open district was selected?

A. That is the reason we selected that as the district.

Q. And would it be a fair characterization, then, to say that the district was selected as it was in order to accomplish a result anyway because you knew you were dealing predominantly with Negroes?

A. Yes, sir.

* * * * *

[2227] Q. Were there any reasons or background to your decision to vote in favor of Plan A which you haven't already testified to?

A. Only except the fact that at this point it seemed to me this was the time for the Burbank and Noyes area to go back to Muir where it used to go.

My children all went to Muir, Burbank, Eliot and Muir, and where earlier when the Pasadena High School was built and we

scheduled those children to go there, that seemed perfectly logical at the time. Comes [2228] 1967 and I can really see what some of the problems are, at least I think I can see, and we've got to replace—send Caucasian students over to Muir. I was extremely unpopular in my neighborhood, I might add.

Q. What you are saying, then, is you have come to the point that some aggressive, affirmative program was necessary?

A. Yes, sir.

Q. And those same reasons were the ones that prompted you to vote against the rescission of Plan A after the new board came on in the summer of 1967?

A. That is correct.

Q. And to vote in favor of reinstituting it as to 80 percent of the area in 1969?

A. Correct.

Q. What was your understanding as to the reason why in 1969 the reinstitution of Plan A, if we can call it that, didn't include the entire geographical area that had been involved in 1967?

A. I think simply as a matter that was similar, we are really facing the idea now that there has got to be a complete and aggressive program to integrate at all levels, and we simply said the entire Eliot area without tagging onto the two other little pieces that had been attached to it in the original Plan A.

NOTICE OF MOTION AND MOTION BY PASADENA CITY BOARD OF EDUCATION FOR (1) RELIEF FROM THE COURT'S JUDGMENT, (2) DISSOLUTION OF THE COURT'S INJUNCTION, (3) TERMINATION OF THE COURT'S CONTINUING SUPERVISION OVER THE ACTIONS OF SAID BOARD AND (4) ALTERNATIVELY, FOR MODIFICATION OF PLAN FOR INTEGRATION DATED FEBRUARY 18, 1970.

Filed 15 January 1974.

To This Honorable Court;

To Plaintiffs Nancy Anne Spangler, by her father and next friend, James E. Spangler, Jr., Judith R. Clarke, by her father and next friend, Wilton A. Clarke; and Vivion Rostker, by her father and next friend, Skipper Rostker, for themselves individually and on behalf of all others similarly situated, and to their attorneys A. L. Wirin, Fred Okrand, John D. O'Loughlin and Jill Jakes; and

To Plaintiff-Intervenor, United States of America, and to its attorney Robert H. Bork, Acting Attorney General:

Please Take Notice that on the 15th day of January 1974, at 10 o'clock a.m., or as soon thereafter as counsel can be heard, in the Courtroom of the Honorable Manuel L. Real, United States Courthouse Building, 312 North Spring Street, Los Angel . California, the Pasadena City Board of Education (the Board) will move, and does hereby move, the above-entitled Court as follows:

(1) For modification of a judgment of this Court dated January 22, 1970, pursuant to the jurisdiction retained therein and pursuant to Rule 60(b) of the Federal Rules of Civil Procedure;

(2) For dissolution of this Court's injunction in the above-entitled matter;

(3) For termination of this Court's continuing supervision over the actions of the Board; or in the alternative

(4) For approval of the Board's proposed modification of the "Pasadena Plan" dated February 18, 1970. A copy of said modification entitled "The Integrated Zone/Educational Alternatives Plan" is attached hereto as "Exhibit 1".

Said motions will be made upon the grounds that:

(1) Due to changing circumstances within the City of Pasadena, the Board is obliged to seek modification from this Court of its judgment in the above-entitled matter in order to eliminate the provision therefrom that ". . . there shall be no school in the District, elementary or junior high or senior high school, with a majority of any minority students";

(2) The present Board and its predecessor Board have complied with the mandate of this Court relating to a unitary school district;

(3) This Court is no longer required to maintain continuing jurisdiction over the Board's actions; and alternatively

(4) Proposed non-discriminatory modifications to the Pasadena Plan embody ng sound educational programs should be approved by this Court.

This motion is based upon the records, pleadings and documents on file in this action, upon the affidavits of Ramon C. Cortines and Henry Marcheschi, the memorandum of points and authorities in support thereof, and such other matters and testimony as may be presented upon the hearing of said motion.

Dated: December 19, 1973.

PAUL, HASTINGS, JANOFSKY & WALKER
LEE G. PAUL
ROBERT G. LANE
PETER D. COLLISSON
By /s/ LEE G. PAUL
LEE G. PAUL
Attorneys for Pasadena City Board of Education

IT IS ORDERED that this matter shall come on for hearing before me on the 25th day of February, 1974, at 10 o'clock a.m.

/s/ MANUEL L. REAL
Manuel L. Real
United States District Judge.

AFFIDAVITS OF RAMON C. CORTINES AND HENRY MARCHESCHI IN SUPPORT OF DEFENDANTS' MOTION.

Filed 15 January 1974.

RAMON C. CORTINES, being first duly sworn, deposes and says that:

He is now and has been since August 1972 Superintendent of Schools for the Pasadena Unified School District. Prior thereto and for a period of approximately four years he was Assistant Superintendent in charge of secondary education for said District.

He is familiar with the provisions of and performance under the Plan for Integration of the Pasadena Unified School District (the District) approved by the United States District Court on January 22, 1970. Since the adoption of said Plan the District has in fact become a unitary school district in compliance with the order of this Court and has implemented the provisions of said Plan by:

For the Elementary Schools.

(1) Creation of and dividing the District into four ethnically balanced geographic areas;

(2) Pairing of schools of different ethnic composition within each area so that said schools provided primary level education for kindergarten through grade three and elementary level education for grades 4 through 6:

(3) Assignment of students within the respective geographic areas to comply with the requirement that no school as of September 1970 had a majority of any minority; and

(4) Cross-town busing.

For the Junior High Schools.

(1) Establishment of new ethnically-balanced attendance zones;

(2) Establishment of four intermediate schools in grades 7 and 8;

(3) Designation of these schools to avoid classes having a majority of any minority; and

(4) Cross-town busing.

For the High Schools.

(1) Establishment of ethnically-balanced attendance zones;

(2) Designation of these schools to avoid classes having a majority of any minority at each school site;

(3) Transfer of 9th grade to senior high school level; and

(4) Cross-town busing.

For the Entire District.

(1) Reassignment of teachers to reduce racial imbalance;

(2) Establishment and implementation of new recruitment and hiring policies for the District designed to attract minority candidates for teaching and administrative positions;

(3) Establishment and implementation of a procedure within the District to increase promotions of minority teachers and administrators; and

(4) An appeals procedure has been designed and informally implemented to protect all rejected applicants for vacant positions.

Despite the steps taken as aforesaid under the Plan to accomplish integration within the District, there has been a progressive failure of ability to comply. During the second year of the Plan (1971-72) one school had a majority of a minority;

during the third year (1972-73) four schools fell into this category; this year, the fourth year, there are five such schools and six more are within a few percentage points of having a majority of a minority. If the present trend is allowed to continue, within the framework of the existing Plan, it will become a practical impossibility to comply district-wide with the provisions of the Court's Judgment that "there shall be no school in the District . . . with a majority of any minority students".

This failure is due primarily to a decrease in the number of Anglo-Caucasian students and an increase in the number of Negro and Spanish-surname students attending the Pasadena schools. Exhibit 1 attached hereto shows the changes in the ethnic composition of the District since establishment of the Pasadena Plan. The exhibit shows a progressive change at each educational level in the ethnic composition of the District. The number of Anglo-Caucasian students continued to decrease at all levels while the number of Negro and Spanish-surname students continues to increase at almost all levels.

Affiant is prepared to support the modifications approved by the Board of Education and attached as Exhibit 2 hereto. Affiant further believes that these modifications can successfully be applied in the Pasadena Unified School District and that they will offer opportunities for sound educational programs for the elementary students of the school district.

/s/ RAMON C. CORTINES,
Ramon C. Cortines.

Subscribed and sworn to before me this 19th day of December, 1973.

/s/ HELEN L. NICHOLSON,
Notary Public in and for said County and State.

HENRY MARCHESCHI, being first duly sworn, deposes and says that:

He is now and has been since July 3, 1973 the President of the Pasadena City Board of Education. Prior thereto and since July 1971 he was a member of said Board of Education.

Affiant is familiar with and as a member of said school board has worked under the Plan for Integration of the Pasadena Unified School District (the Plan) approved by the United States District Court on January 22, 1970.

Affiant has read the Affidavit of Ramon C. Cortines dated December 19, 1973 and prepared for filing simultaneously with this affidavit, and affiant subscribes to and reaffirms the statements made by Mr. Cortines in his said affidavit.

Affiant believes that as a result of the implementation of said Order of Court described in the Cortines affidavit the Pasadena Unified School District is now a unitary school district. It is the desire of affiant and the other members of the Pasadena Board of Education to improve the quality of education in the Pasadena school system and also to further implement desegregation within said school district. Affiant nevertheless is satisfied that the increase in the number of minority students attending the Pasadena schools and the decrease in the number of white students attending such schools has created a condition of racial instability which threatens future integration of the school district and has made it a practical impossibility to continue to comply with the portion of the judgment of this Court which required that there be no school in the district "having a majority of any minority students". The district should, therefore, be relieved from said provision of said judgment.

Further, affiant believes and therefore affirms that greater racial stability and an improved, integrated and non-discriminatory educational program can best be achieved through the adoption of certain modifications to the Plan. Attached hereto, marked "Exhibit 2", is a copy of the "Proposed Modifications

to the Pasadena Plan" which affiant as President of the Board has endorsed and has instructed the Board's attorneys to present to this Honorable Court.

/s/ HENRY MARCHESCHI,
Henry Marcheschi.

Subscribed and sworn to before me this 19th day of December, 1973.

/s/ LINDA C. BURGHDORF,
Notary Public in and for said County and State.

"Exhibit I"

Ethnic Group	Level	October 1970*		October 1973**	
	K-3	4247	49.2	3003	42.0
	4-6	3302	50.2	2364	41.5
Anglo-Caucasian	7-8	2466	54.4	1594	40.2
	9-12	5537	60.1	4125	49.1
Total	K-12	15,552	53.7	11,086	44.0
	K-3	3105	36.0	2776	38.9
	4-6	2416	36.7	2470	43.4
Negro	7-8	1477	32.6	1773	44.7
	9-12	2520	27.3	3075	36.6
Total	K-12	9518	32.9	10,094	40.0
	K-3	931	10.8	1100	15.4
	4-6	634	9.7	652	11.5
Spanish Surname	7-8	384	8.5	464	11.7
	9-12	696	7.6	840	10.1
Total	K-12	2645	9.1	3056	12.1

*Excludes Roosevelt

**Excludes Roosevelt, Home Teaching, Five Acres, Hillside Episcopal Home and E. H. class at Lincoln.

"EXHIBIT 2"

Pasadena Unified School District

December 18, 1973

THE INTEGRATED ZONE/EDUCATIONAL ALTERNATIVES PLAN
A PROPOSED MODIFICATION TO THE "PASADENA PLAN"

Introduction.

Because five of the District's 32 regular schools now have a majority of a minority race and an additional six schools are within a few percentage points of joining this category, certain modifications to the Pasadena Plan are mandatory. The proposed modifications are designed to insure as much continuity with the present form of public education in Pasadena as possible. The overall effect of these modifications will be to allow parents to express more freedom in choosing the location and type of education available to each of their children and to motivate schools to compete for attendance of these children.

Modifications.

(1) The first modification involves a return to the elementary system, Kindergarten through Grade 6, thereby discontinuing the current primary (K-3), elementary (4-6) organization. This change is necessary to provide a sufficient number of school sites within each zone from which parents can choose the type of education most appropriate for each of their children.

(2) The second modification involves establishment of unique educational alternatives at each K-6 school site in addition to the ongoing traditional program being taught there. Studies have shown that sufficient excess capacity exists to accomplish this easily. Each unique alternative is to be designed and placed at a particular school site so that it acts as a "magnet" to draw students from all parts of a zone, thus encouraging integration.

The following are some unique alternatives which, in addition to instruction in the basic skills, can provide exciting educational opportunities (see Exhibit A for additional information about each opportunity) for children:

1. *Alternative School Program*—Emphasizes the regular curriculum in an unstructured environment.
2. *Fundamental School Program*—Emphasizes the regular curriculum in a structured environment.
3. *A Fine and Performing Arts Program*—Will emphasize creative experiences in art, music, drama, dance, and literature.
4. *An Animal and Plant Life Program*—Will emphasize first-hand experience with actual raising of crops and animals.
5. *A Daily Newspaper-Based Program*—Will use the daily newspaper as the basis for study in reading, mathematics, social science, science, art, and other areas.
6. *A School in the Community/Career Awareness Program*—Will emphasize direct experiences with institutions and activities in the community as the basis of study.
7. *A Social Science/Science Program*—Will emphasize multi-cultural studies and outdoor, ecology-oriented studies.
8. *A Foreign Language and Cultural Program*—Will emphasize the mastery of a foreign language and the understanding of its cultural setting.
9. *An Early Childhood Education Program*—Will encompass children from four (4) to eight (8) years of age and provide multiple educational experiences that may prepare them for higher achievement in subsequent grades.

The specific, unique alternatives located at each school site will be defined prior to the beginning of the 1974-75 school year.

The existing special schools, including the Fundamental School and the Alternative School, will be maintained and expanded if necessary to act as special District-wide "magnet schools". These schools have already demonstrated their ability to promote integration on a voluntary basis. Additional magnet schools may be added such as a year-round school.

(3) The third modification involves the elimination of specific elementary school attendance boundaries. In their place four racially and ethnically balanced zones, representative of the district as a whole, will be created whose boundaries coincide with the four existing areas on which the present Pasadena Plan is designed. Exhibit B shows the zones, their boundaries, and the schools contained in each zone. Any parent who lives within a zone may choose to send his child to any school within that zone. The school district will provide all required transportation. Thus, all students who are presently enrolled in our schools would be able to continue to attend the school that they now attend if their parents so choose or they would be free to choose from any other school within their zone.

(4) On the basis of providing parents with new options as to the type of education available, the ethnic balance at some sites may be altered from what it is at present. It is, therefore, proposed that if any school's ethnic profile should deviate significantly from the District-wide ethnic profile, that school would be paired with a "sister school" with an opposite ethnic make-up. District transportation would then be provided so that students from both schools would share in special educational programs covering at least one-half a school day per week. These special educational programs will be available to students on an optional basis. Examples may include cooperative art/music programs or programs similar to those alternatives outlined previously. The special programs will be designed to encourage interest and desire to participate.

Unmodified Features of the Pasadena Plan.

The four modifications presented apply to the elementary grades (K-6) only. Modifications related to junior high school

and senior high school attendance are: s present special problems and are now being studied by the sch ool district administrators at the direction of the Board of Educ ation.

Finally, all other features of the p resent Pasadena Plan including teacher recruitment and assig ment, personnel advancement, recruitment and advancement f administrators, etc., are to remain as operating currently.

Conclusion.

The porposed modifications are de signed to demonstrate affirmative action on the District's pa to stimulate integration within each zone without mandator assignment of students. Further, the proposed modifications w ill allow parents to choose the type of education they want for each of their children.

The modifications will introduce t e element of competition among the schools in each zone for pupil attendance, thereby introducing a critical new element o improve the quality of education in Pasadena schools.

Finally, the modifications are desi ned to stabilize the ethnic composition of the school district s that meaningful integration can take place.

Exhibit A.

Every elementary school in the di trict will provide for each student a program in the basic skill of reading, mathematics, and language arts as well as physic l education. Additionally special programs such as, compen atory education (Title I, ESEA) mentally gifted minors (M GM), and others that are now a part of the regular school prog am will continue.

One of the mini-schools suggeste below would be a component within the regular school.

Students would have the opport nity to attend the mini-school for instruction in subjects c her than the basic skills based on their interest in that sch ol's alternative emphasis.

Students may also receive this instruction in these subjects in the regular program being taught at the school.

For example, a student living near Altadena School has a number of choices. He may attend Altadena's regular school program or its mini-school *or* he can choose the regular school program or any mini-school at any other school within that zone. The following are brief descriptions of *some* possible mini-schools suggested to date:

1. *Fine and Performing Arts Mini-School* will provide opportunities for students to create music, dance, write and enjoy prose and poetry, as well as original plays. Students will have many opportunities to perform for the public, and to exhibit their work in the community. Extensive involvement of community resources is planned.
2. *Media/Current Events Mini-School* will use daily and weekly newspapers as the basis for study in reading, mathematics, social science, and other areas. The diversity of types of information in each newspaper makes it a good tool for instruction in many areas. Additionally, students will write, setup, and print their own newspaper on a regular basis using the techniques and equipment commonly used in the production of a daily newspaper.
3. *A Foreign Languages and Cultures Mini-School* will emphasize the mastery of a foreign language and the understanding of its cultural setting. Language specialists will give instruction for a block of time each day in French, Spanish, Russian or German, and Japanese or Chinese. In addition, time will be devoted daily to studies of the cultures and peoples represented by these languages by a teacher trained in multi-cultural studies and intergroup activities.
4. *A School in the Community/Career Awareness Mini-School* will emphasize direct experiences with institutions and activities in the community as the basis of study. Trips to various places in the community, including provision for instruction as these sites will be

central to this program. Students will not only learn about the existence of agencies, jobs, and institutions, but also how they work and how students can train themselves to qualify for a career in a variety of fields.

5. *An Animal and Plant Life Mini-School* will emphasize first-hand experiences with the actual raising of animals and crops. Facilities will be provided so that a wide variety of experiences in horticulture and husbandry may be presented. An appreciation of labor and the discovery of various phases of development of animal and plant life will be integral parts of this program.
6. *A Social Science/Science Mini-School* will emphasize multi-cultural studies as well as outdoor, ecology-oriented studies. A few foreign countries and cultures will be studied in depth and compared with out life here in the United States. These studies will include customs and life styles, government and sociology. Additionally, outdoor educational experiences will be provided many times during the school year with emphasis on the study of the environment and the impact of developed and undeveloped societies on their environment.
7. *An Early Childhood Education Mini-School* will provide a design with a variety of classroom structure, educational experiences in language, reading, mathematics, music, art, science, physical activity and health that will develop a readiness base and continuum of skills in primary grades. Parent participation is essential in all phases of the program to insure the child's well-being and progress.

"Exhibit 2"

-12-

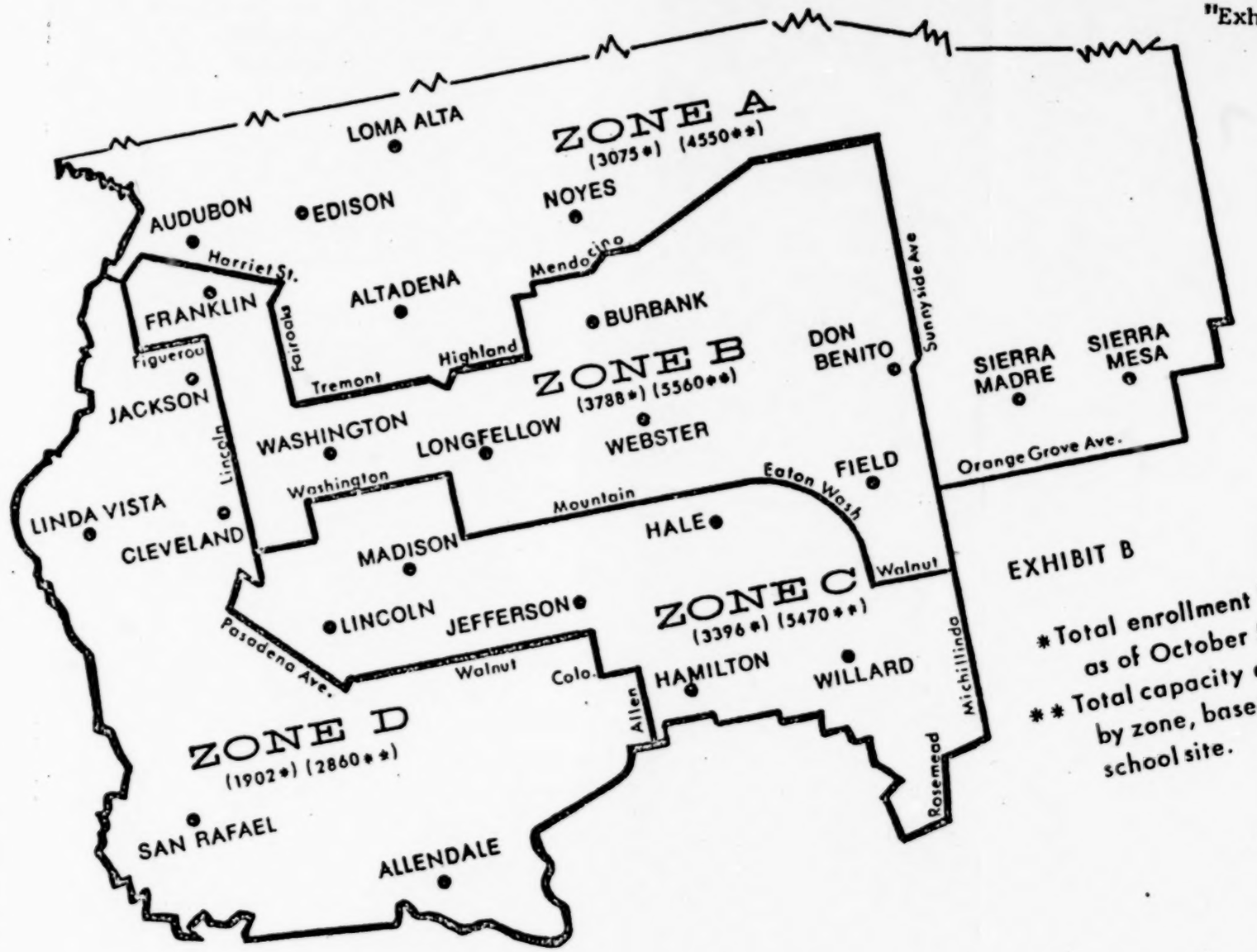

EXHIBIT B

*Total enrollment by zone as of October 5, 1973

**Total capacity available by zone, based on K-6 school site.

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SUPPLEMENT TO THE MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE PRELIMINARY RESPONSE OF THE UNITED STATES.

Filed 28 January 1974.

The United States of America, plaintiff-intervenor in the above-styled action, hereby submits to the Court copies of the Order in the three cases cited at page 7, lines 14 through 19 of the Memorandum of Points and Authorities in support of the Preliminary Response of the United States, filed January 22, 1974.

Exhibit "A" is the Order of dismissal of July 23, 1973, in the Case of *United States of America, et al.* v. *Georgia,* United States District Court for the Northern District of Georgia, Civil Action No. 12,972;

Exhibit "B" is a copy of the Order of dismissal of July 5, 1973, in the case of the *United States* v. *County School Board of Sussex County, Virginia, et al.,* United States District Court for the Eastern District of Virginia, Richmond Division, Civil Action No. 6060-R; and

Exhibit "C" is a copy of the Order of dismissal of July 5, 1973, in *United States* v. *School Board of Richmond County, Virginia, et al.,* United States District Court, Eastern District of Virginia, Richmond Division, Civil Action No. 224-69-R.

Dated: January 28, 1974.

Respectfully submitted,

J. STANLEY POTTINGER
Assistant Attorney General
WILLAM D. KELLER
United States Attorney
JAMES STOTTER, II
Assistant United States Atty.
Central District of California
/s/ BRIAN K. LANDSBERG
Brian K. Lansberg
Attorney, Department of Justice
Washington, D.C. 20530

Exhibit "A".

IN THE UNITED STATES DISTRICT COURT
for the Northern District of Georgia
Atlanta Division

UNITED STATES OF AMERICA, *Plaintiff*, CHARLIE RIDLEY, et al., *Plaintiff-Intervenor*, *vs.* STATE OF GEORGIA, et al. (Barrow County School District, Cowetta County School District, Hogansville City School District, Le Grange City School District, Meriweather County School District, Newton County School District, Rome City School District, Troup County School District, Walker County School District, West Point City School District, Winder City School District, Decatur City School District)	Civil Action No. 12,972

ORDER.

By order of June 7, 1973, this Court required the United States to show cause why the Barrow County School District, the Cowetta County School District, the Hogansville City School District, the La Grange City School District, the Meriweather County School District, the Newton County School District, the Rome City School District, the Troup County School District, the Walker County School District, the West Point City School District and the Winder City School District should not be dismissed from this suit pursuant to *Wright* v. *Board of Public Instruction of Alachua County, Florida,* 445 F.2d 1397 (5th

Cir. 1971); *Steele* v. *Board of Public Instruction of Leon County, Florida,* 448 F. 2d 767 (5th Cir. 1971); *Youngblood* v. *Board of Public Instruction of Bay County,* 448 F. 2d 770 (5th Cir. 1971). While the City of Decatur School District was not included in the show cause order of June 7, 1973, it was also considered for these purposes. Additionally, the State of Georgia filed a motion on June 28, 1973, requesting the Court to drop the State of Georgia, the State Board of Education, its individual members and the State Superintendent of Schools as parties-defendant in this case.

On the basis of the Response filed by the United States and in view of the record in this case, this Court has determined (1) the Newton County School District will not implement a terminal student assignment desegregation plan until the 1973-74 school year (2) the Rome City School District had a major enforcement problem at the beginning of the 1972-73 school that was resolved by the Stipulation approved by this Court on November 29, 1972 and will not implement a terminal student assignment desegregation plan until the 1973-74 school year (3) the City of Decatur School District will not implement a terminal desegregation plan until the 1973-74 school year (4) the Winder City School District was consolidated into the Barrow County School District on July 1, 1971 and the same desegregation plans for both the city and county which were approved by this Court's order of April 21, 1970 were retained with the exception that Winder Junior High School now serves all students in grades 7-8 residing in both the city and county and the Auburn, Bethlehem, County Line, Holsenbeck and Statham elementary schools serve grades K-6 rather than grades K-8, and while the consolidation and zone and grade structure modifications were not approved by this Court prior to implementation, they have not adversely affected the desegregation of the schools in either Winder City or Barrow County (5) the Meriweather County School District abandoned the policy of assigning students on the basis of sex to the two schools in the City of Greenville for the 1971-72

school year and has paired both schools so that Greenville Elementary now serves all students in grades 1-7 and Greenville High School now serves all students in grades 8-12 in the Greenville attendance zone which was established by this Court's order of April 21, 1970 and while the modifications were not approved by this Court prior to implementation, they have not adversely affected the desegregation of the school district (6) the Barrow County School District, the Cowetta County School District, the Hogansville City School District, the La Grange City School District, the Merriweather County School District, the Troup County School District, the Walker County School District and the West Point City School District have for three school years complied with the Supreme Court's decision in *Brown* v. *Board of Education*, 347 U. S. (1954) and have become "unitary" in the sense required by the Supreme Court's decision in *Green* v. *County School Board*, 391 U. S. 430 (1968) and *Swann* v. *Board of Education*, 402 U. S. 1 (1971) (7) The State of Georgia, the State Board of Education, its' individual members, and the State Superintendent of Schools have a continuing duty to promote compliance by the school district in this cause with orders of this Court and of the United States District Courts for the Middle and Southern Districts of Georgia and should remain as active parties to this case until all of the school districts in this cause have been placed on the inactive docket.

Accordingly, IT IS ORDERED That:

1. The State of Georgia, the State Board of Education, its individual members, the State Superintendent of Schools, the Newton County School District, the Rome City School District and the City of Decatur School District shall remain as active parties to this cause and shall continue to comply with all of the requirements of this Court's order of December 17, 1969, as subsequently modified, with the following exceptions:

(a) The school districts which remain as active parties in this cause, in lieu of providing the information required by this

Court's order of December 17, 1969, as subsequently modified, in their bi-annual reports may provide the information reported in the School System Summary Reports (Forms 101 and 102) which are filed with the Department of Health, Education and Welfare. However, all school districts which remain as active parties in this cause shall continue to file bi-annual reports to the State Board of Education and the Department of Health, Education and Welfare.

(b) The provisions of the detailed regulatory injunction of December 17, 1969, as subsequently modified, specifying the duties of the State defendants in this cause, shall automatically be dissolved as they pertain to each school district which this Court or the United States District Courts for the Middle or Southern Districts of Georgia place on the inactive docket and the following permanent injunction substituted:

> The State of Georgia; the State Board of Education, its individual members, and the State Superintendent of Schools (a) shall not take any action which may result in the re-establishment of the former dual school system in any of said school districts; (b) shall not permit any action by any of said school districts which would violate the terms of the permanent injunction provided for in paragraph 4 of this order; (c) shall not provide any state funds to any of said school districts which has been found in violation of the terms of the permanent injunction provided for in paragraph 4 of this order; and (d) shall make appropriate inquiries whenever the State Department of Education receives information or complaints reflecting possible violation by any of said school districts of the terms of the permanent injunction provided for in paragraph 4 of this order.

2. The consolidation of the Winder City School District into the Barrow County School District is approved.

3. The abandonment of sex-separation at the Greenville Boys School and the Greenville High School by the Meriweather County School District and the pairing of the two

schools so that Greenville Elementary serves all students in grades 1-7 and Greenville High School serves all students in grades 8-12 residing within the Greenville attendance zone (which attendance zone was approved by this Court's order of April 21, 1970), is approved.

4. The detailed regulatory injunction issued by the Court on December 17, 1969, as modified by subsequent orders of this Court, is dissolved for the Barrow County School District, the Cowetta County School District, the Hogansville City School District, the La Grange City School District, the Meriweather County School District, the Troup County School District, the Walker County School District and the West Point City School District and the following permanent injunction is substituted for each school district:

(a) The school district shall take no action which tends to segregate students or faculty by or within schools on the basis of race, color or national origin.

(b) Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

(c) Each school district shall permit a student attending a school in which his race is in the majority to choose to attend another school where his race is in the minority. Any student transferring under this arrangement must be provided with free transportation and space must be made available in the school to which the student desires to move.

(d) Bus routes and the assignment of students to buses will be designed to insure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis.

(e) All school construction, school consolidation and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the reoccurrence of the dual school structure.

(f) If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district, it shall do so on a non-discriminatory basis, except that it shall not consent to transfer where the cumulative effect will reduce desegregation in either district.

5. With the exception of the Newton County School District, the Rome City School District, and the Decatur City School District these school districts are placed on the inactive docket of this Court subject to being re-activated on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary.

Done this 23rd day of July, 1973.

Exhibit B.

IN THE UNITED STATES DISTRICT COURT,
For the Eastern District of Virginia,
Richmond Division.

UNITED STATES OF AMERICA *vs.* COUNTY SCHOOL BOARD OF SUSSEX COUNTY, VIRGINIA, et al.	Civil Action No: 6060-R

ORDER.

Deeming it proper to do, it is ADJUDGED and ORDERED that:

1. The detailed regulatory injunction issued by this Court on July 10, 1969, as modified by orders of August 1, 1969 and September 11, 1970, is dissolved.

2. The permanent injunction entered on April 30, 1969, is modified to include the following provisions:

a. Defendants shall take no action which tends to segregate students or faculty by or within schools on the basis of race, color, or national origin.

b. Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

c. The school district shall permit a student attending a school in which his race is in the majority to choose to attend another school, where his race is in the minority. Any student transferring under this arrangement must be provided with free transportation and space must be made available in the school to which he desires to move.

d. Bus routes and the assignment of students to buses will be designated to insure the transportation of all eligible pupils on a nonsegregated and otherwise non-discriminatory basis.

e. All school construction, school consolidation, and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the reoccurrence of the dual school structure.

f. If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district, it shall do so on a non-discriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district.

3. This action is hereby closed as an active case of this Court, subject to being reopened on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary.

Let the Clerk send copies of this order to counsel of record.

Date: 7-5-73.

Exhibit C.

IN THE UNITED STATES DISTRICT COURT,
For the Eastern District of Virginia,
Richmond Division.

UNITED STATES OF AMERICA *vs.* SCHOOL BOARD OF RICHMOND COUNTY, VIRGINIA, et al.	}	Civil Action No: 224-69-R

ORDER.

Deeming it proper so to do, it is ADJUDGED and ORDERED that:

1. The detailed regulatory injunction issued by this Court on June 9, 1970, is dissolved.

2. The defendant school district is permanently enjoined from operating a dual system of racially identifiable schools. In addition, operation of the defendant school district shall be subject to the following provisions:

a. Defendants shall take no action which tends to segregate students or faculty by or within schools on the basis of race, color, or national origin.

b. Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, and national origin.

c. The school district shall permit a student attending a school in which his race is in the majority to choose to attend another school, where his race is in the minority. Any student transferring under this arrangement must be provided with free transportation and space must be made available in the school to which he desires to move.

d. Bus routes and the assignment of students to buses will be designed to insure the transportation of all eligible pupils on a nonsegregated and otherwise non-discriminatory basis.

e. All school construction, school consolidation, and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the reoccurrence of the dual school structure.

f. If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district of students who live outside the district, it shall do so on a non-discriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district.

3. This action is hereby closed as an active case of this Court subject to being reopened on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary.

Let the Clerk send copies of this order to counsel of record.

Date: 7-5-73.

CERTIFICATE OF SERVICE BY MAIL.

I, Virginia M. Molus, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is Office of United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District Court for the Central District of California, at whose direction the service by mail described in this Certificate was made; that on January 28, 1974, I deposited in the United States mails in the United States Courthouse at 312 North Spring St., Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Supplement to the Memorandum of Points and Authorities in Support of the Preliminary Response of the United States.

addressed to Mr. Fred Okrand
Legal Director of Southern California
ACLU Foundation
323 West Fifth Street
Los Angeles, California 90013;

Mr. Lee G. Paul
555 So. Flower Street, 22nd Floor
Los Angeles, California 90071;

Mr. Charles B. Johnson
Attorney at Law
353 East Orange Grove Ave.
Pasadena, California 91104,

at their last known address, at which place there is a delivery service by United States mail.

This Certificate is executed on January 28, 1974, at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.

/s/ VIRGINIA M. MOLUS.

USA-12c-240
(Rev. 10/19/67)

UNITED STATES DISTRICT COURT,
Central District of California.

NANCY ANNE SPANGLER, et al.,
Plaintiffs,
and
UNITED STATES OF AMERICA,
Plaintiff-Intervenor,
vs.
PASADENA CITY BOARD OF EDUCATION, et al.,
Defendants.

No. 68-1438-R

AFFIDAVIT OF JAMES E. SPANGLER, JR., IN OPPOSITION TO MOTIONS FOR RELIEF FROM THE COURT'S JUDGMENT; DISSOLUTION OF THE COURT'S INJUNCTION; TERMINATION OF THE COURT'S CONTINUING SUPERVISION OVER THE ACTIONS OF THE PASADENA CITY BOARD OF EDUCATION; AND, ALTERNATIVELY, FOR MODIFICATION OF PLAN FOR INTEGRATION DATED FEBRUARY 18, 1970.

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } ss.

JAMES E. SPANGLER, JR., being first duly sworn, says:

I am the father of Nancy Ann Spangler, one of the plaintiffs in the within action, and a resident within the jurisdiction of the Pasadena Board of Education for 11½ years.

On January 23, 1970, this Court entered its judgment against the defendant Pasadena City Board of Education, its members, agents, and their successors, enjoining them "from discriminating on the basis of race in the operation of the Pasadena Unified School District," and requiring them, among other things, to "prepare and adopt a plan to correct racial imbalance at all levels in the Pasadena School District" and "submit that plan to the Court by February 16, 1970."

The Pasadena City Board of Education is composed of 5 members. On January 27, 1970, at a special meeting, the Board voted 3 to 2 against a motion to appeal the Court's decision. The then three members of the Board who voted against taking an appeal were LuVerne La Motte, Albert C. Lowe, and Joseph S. Engholm. A copy of the first page of the minutes of said meeting, cumulative page 17,275 of the Board's minutes, is attached hereto as Exhibit A.

On March 2, 1970, a motion for leave to intervene in this action was filed by parents who were dissatisfied by the Board's decision not to appeal this Court's judgment. That motion was denied by this Court on March 4, 1970, and entered on March 9, 1970.

On or about April 1, 1970, a campaign to recall the three board members who had voted against taking an appeal was started. Henry Marcheschi, a present member of the Board of Education, supported the recall and was a candidate on a slate with two others for election to the Board should the recall succeed. Attached hereto, as Exhibit B, are copies of campaign literature distributed by or on behalf of said three candidates during the campaign. Attached hereto as Exhibit C is a copy of the statement of qualifications of said three candidates which accompanied the ballot for the recall election. Said election was held on October 13, 1970; the recall failed to receive sufficient votes.

On April 20, 1971, Mr. Marcheschi was elected to the Board of Education at a regular election for Board offices.

At the November 9, 1971 meeting of the Board, Mr. Marcheschi presented a plan for the Pasadena school system to replace the Pasadena Plan for the integration of the Pasadena Unified School District, which Plan had been approved by this Court in March of 1970. A copy of the third page of the Board's minutes of said date (17,689 of the cumulative pages), is attached hereto as Exhibit D. A copy of said proposal to replace the Pasadena Plan is attached hereto as Exhibit E.

At the Board meeting of December 21, 1971, Mr. Marcheschi moved that said new Pasadena plan be approved and made the action of the Board. Said motion was lost for want of a second. A copy of the second page of the Board's minutes of said date (page 17,712 of the cumulative pages) is attached hereto as Exhibit F.

At the Board meeting of January 9, 1973, Mr. Marcheschi presented a proposed "Neighborhood School/Integrated Zone Plan for Grades K-6." A copy of said plan is attached hereto as Exhibit G. A copy of the fourth page of the minutes of the Board of said date (cumulative page 18,026) is attached hereto as Exhibit H.

A copy of the fifth, sixth, and seventh pages of the Board minutes of the meeting of April 24, 1973 (cumulative pages 18,102 through 18,104), is attached hereto as Exhibit I.

On March 6, 1973, an election for three offices on the Pasadena City Board of Education was held. With regard to support or non-support of the Pasadena Plan for the Integration of the Pasadena Unified School District, as approved by this Court in March 1970, the Board, just prior to this date, divided as follows: Four members (LuVerne La Motte, Ann T. Hight, Albert C. Lowe and Samuel C. Sheats) supported the Plan; one member, Henry Marcheschi opposed the Plan. For the election of March 6, 1973, three persons, Richard Vetterli, Henry Myers, and Lyman W. Newton, who opposed the Plan, ran on a slate against three other persons who supported the plan, incumbents Hight and Lowe, a third person, Benjamin S. Crocker, and others. At

the election of March 6, 1973, Messrs. Vetterli, Myers and Newton won. Attached hereto as Exhibit J are copies of literature which was distributed by or on behalf of said persons during the campaign.

Attached hereto as Exhibit K are copies of the Statements of Qualifications submitted by candidates Vetterli, Myers and Newton with the ballot that went to the voters in the March 6, 1973 election.

In said election of March 6, 1973, Board member Marcheschi supported Vetterli, Myers and Newton. Attached hereto as Exhibit L is a copy of a Vote-O-Gram sent to voters by Mr. Marcheschi during the campaign preceding the election.

Attached hereto as Exhibit M are copies of the sixth, seventh and eight pages (cumulative pages 18,164-18,166) of the minutes of the July 10, 1973 meeting of the Board of Education. The Board meeting of July 10, 1973 was the second meeting of the newly constituted Board following the election of March 6, 1973, its first meeting having been an organizational meeting on July 2, 1973. The persons mentioned in the July 10th meeting as having been appointed are all Caucasians. (The Pasadena Unified School District has positions for two Assistant Superintendents.)

Attached hereto as Exhibit N are copies of pages 46 and 47 of the Pasadena Plan approved by this Court in March 1970.

Attached hereto as Exhibit O are copies of the seventh through nineteenth pages (cumulative pages 18,376-18,388) of the minutes of the December 18, 1973 meeting of the Board.

Attached hereto as Exhibit P are the thirteenth through twenty-first pages (cumulative pages 18,401-18,409) of the minutes of the January 8, 1974 meeting of the Board.

Attached hereto as Exhibit Q is a copy of the Introduction to the Teachers' Guide for the book, "As I Grew Older," referred to in the minutes of the meeting of January 8, 1974, Exhibit P attached hereto. With the exception of the "Notes" on page 6,

the Introduction in "As I Grew Older" is identical with that in "Face to Face," the other book referred to in Exhibit P.

Attached hereto as Exhibit R are copies of the third through eighth pages (cumulative pages 18,415-18,420) of the minutes of the January 15, 1974 meeting of the Board.

/s/ JAMES E. SPANGLER, JR.,
James E. Spangler, Jr.

Subscribed and sworn to before me this 19th day of February, 1974.

/s/ ALICE R. FUCHS,
Notary Public.

AFFIDAVIT OF SAMUEL C. SHEATS IN OPPOSITION TO MOTION BY PASADENA CITY BOARD OF EDUCATION.

Filed 23 February 1974.

SAMUEL C. SHEATS, being first duly sworn, deposes and says that:

On September 28, 1971, I was duly appointed to the Pasadena City Board of Education, and have continued to serve as a member thereof ever since.

As the only black member of the Pasadena City Board of Education, I strongly disagree with the other four members of that board, who seek (1) relief from this court's judgment, (2) dissolution of this court's injunction, (3) termination of this court's continuing supervision over the actions of said board, and (4) alternatively, modification of plan for integration dated February 18, 1970, and pray that this Court will deny all of the requested relief, as not in the best interest of the Pasadena Unified School District.

My reasons for asking this court to do so are as follows:

Since July 2, 1973, when, following their election on March 6, 1973, three (3) of the present board members, constituting a majority of the board, took office for the first time, I have been gravely concerned about the legality of some of the actions of the board.

For example, between July 2, 1973, and July 10, 1973, no public meeting of the board was scheduled, and none was held. Nevertheless, at the meeting of the Board on July 19, 1973, a majority of the members adopted an extensive plan of reorganization of the Pasadena Unified School District, under which the board appointed an acting assistant superintendent for elementary and secondary education, an acting assistant superintendent for personnel and support services, and an acting administrative

director of elementary curriculum, despite my voting against said appointments, and strongly objecting that (1) they were violative of the Ralph-Brown Act (Govt. C. Sec. 54958), since the board's decision to make them was not arrived at in a public meeting; and (2) these appointments were not made in conformity with the Pasadena Plan for Integration, pursuant to the 1970 judgment of this court.

That, further, a majority of the board, after the meeting of July 10, 1973, and before the meeting of July 31, 1973, made further administrative appointments in the form of principals of Wilson Junior High School and Marshall Fundamental School, also in violation of the Ralph-Brown Act, and the Pasadena Plan for Integration.

Specifically, on July 10, 1973, July 31, 1973, and on other dates, I objected to the board that in making the aforesaid appointments to administrative positions it (1) failed to first advertise them, (2) failed to receive applications for said positions from other than those whom they appointed (3) failed to submit the applications for evaluation and determination by a committee appointed for that purpose, (4) failed to have said committee recommend to the superintendent the appointment of any one of five such applicants for each position, (5) failed to receive from the superintendent recommendations for such appointments, and (6) failed to take affirmative steps to urge minority applicants to apply for all of said positions, as required by the Pasadena Plan for Integration and the rules and regulations of Pasadena Unified School District.

That none of the aforesaid administrative appointees is a member of a non-white minority group, so that said appointments were not inconsequential violations of the Pasadena Plan for Integration.

That despite my protests to the board on July 10, 1973, July 31, 1973, and subsequent dates, that it was acting contrary to the requirements of the Pasadena Plan for Integration, and that its intentions in this regard appeared to be hostile to the

effective continuation of the Pasadena Plan, the majority of the board refused to accept or even seriously consider such protests.

Indeed, the majority of the Board determined to appoint a committee to suggest ways of modifying the Pasadena Plan for Integration, and particularly to seek ways of returning Pasadena Schools to the "neighborhood concept", and to reduce what they continually called "forced busing"; I was not permitted to discuss with the Board the constituency of said committee, or serve on it, or in any other way have meaningful access to or in put with it.

As a further step in its determination to attack the Pasadena Plan, the Board decided by a vote of 4-1, with me voting "no", to employ private legal counsel, and to pay it as compensation for drafting a petition to modify the Pasadena Plan, the sum of $50,000.

That during the course of the proceedings leading to the formation of the committee to modify the Pasadena Plan for Integration, of a separate committee to obtain legal counsel, and the actural obtaining of legal counsel, although I am the only black member of the Board, and the only attorney on it, I was never consulted, advised or in any manner made privey to any meaningful discussion, nor was I permitted to attend any meeting of the majority of the Board where discussions were had relative to the appointment of the Pasadena Plan Modification Committee, relative to the employment and compensation of counsel, or any other such discussions before the amendatory plans were approved or adopted, except the July 10, 1973 meeting, nor have I subsequently been able to have effective imput with the majority of the Board with respect to these matters.

That prior to July 2, 1973, the other Board Members consistently announced their opposition to the Pasadena Plan, and their intention to destroy it. The President of the Board made definitive statements in this regard on October 26, 1971 and November 9, 1971. Other members of the board repeatedly announced during their campaign for election in the latter part of 1972 and early 1973 that they intended to abrogate the Pasadena Plan as a first order of business.

By reason of the above premises I am informed and believe and on such information and belief allege, that it is the intention and design of the majority of the Board to have a negative impact upon integration in the Pasadena Unified School District, and that it is their ultimate intention to seek a return to segregated schools in this school district.

As a minority board member, I am extremely apprehensive about the possibility of the majority of the board accomplishing such purpose, and about the grave injury such accomplishment would inflict upon the children of this school district, and especially blacks and other minority children.

Accordingly, and in as much as counsel representing the Board majority does not represent me as a racial and numerical minority of the board, I ask this court to formally recognize that my status in these proceedings is different from that of the other board members, and accord me all of the rights and privileges of any other party whose interests are adverse to those of the majority of the board, including the right for me to be represented by separate legal counsel.

SAMUEL C. SHEATS.

Subscribed and sworn to before me this 23rd day of February, 1974.

.....

Notary Public in and for said County and State.

TRIAL STIPULATION.

Filed 25 February 1974.

It is stipulated and agreed by and between all of the parties to the above action, through their respective counsel of record, in connection with the hearing on the motion by Pasadena City Board of Education for (1) Relief from the Court's Judgment, (2) Dissolution of the Court's Injunction, (3) Termination of the Court's Continuing Supervision over the Actions of said Board and (4) Alternatively, for Modification of Plan for Integration dated February 18, 1970, now scheduled for hearing on Monday, February 25, 1974, in the courtroom of the Honorable Manuel L. Real, Judge Presiding, as follows:

1. No exception will be taken by any of the parties to the right of the Court to consider and pass upon defendant's said motion;

2. The Pasadena Plan enacted pursuant to the Order of this Court dated January 22, 1970 has been implemented;

3. Plaintiffs and Plaintiff-Intervenor are presently aware, on the basis of the discovery thus far conducted, of no violations of the Pasadena Plan up to and including the present, save that it is the contention of Plaintiffs that the appointment of the two Assistant Superintendents and the Director of Elementary Curriculum on July 10, 1973, the appointment of the Principals of the Wilson and Fundamental Schools on July 31, 1973, the failure of the Board to have the Black Task Force and the Mexican American Task Force for the school year 1973-74, the establishment of the Fundamental School, and the effect of the Fundamental School on the sending schools are each violations of said Plan.

4. No objections will be registered to the introduction of any of the items of documentary evidence listed on exhibits which

will be attached hereto prior to the time of the hearing on grounds of authenticity or that said documents are not originals.

Dated: February 23, 1974.

A. L. WIRIN,
FRED OKRAND,
JOHN D. O'LOUGHLIN,
JILL JAKES,

By /s/ FRED OKRAND,
Fred Okrand,
Attorneys for Plaintiffs.

J. STANLEY POTTINGER,
WILLIAM D. KELLER,
JAMES STOTTER II,
BRIAN K. LANDSBERG,
SAMUEL J. FLANAGAN,

By /s/ SAMUEL J. FLANAGAN,
Samuel J. Flanagan,
Attorneys for Plaintiffs-Intervenor.

PAUL, HASTINGS, JANOFSKY & WALKER,
LEE G. PAUL,
ROBERT G. LANE,
PETER D. COLLISSON,

By /s/ LEE G. PAUL,
Lee G. Paul,
Attorneys for Defendant Pasadena City Board of Education.

TRIAL STIPULATION.

Filed 25 February 1974.

It is stipulated and agreed by and between all of the parties to the above action, through their respective counsel of record, in connection with the hearing on the motion by Pasadena City Board of Education for (1) Relief from the Court's Judgment, (2) Dissolution of the Court's Injunction, (3) Termination of the Court's Continuing Supervision over the Actions of said Board and (4) Alternatively, for Modification of Plan for Integration dated February 18, 1970, now scheduled for hearing on Monday, February 25, 1974, in the courtroom of the Honorable Manuel L. Real, Judge Presiding, as follows:

1. No exception will be taken by any of the parties to the right of the Court to consider and pass upon defendant's said motion;

2. The Pasadena Plan enacted pursuant to the Order of this Court dated January 22, 1970 has been implemented;

3. Plaintiffs and Plaintiff-Intervenor are presently aware, on the basis of the discovery thus far conducted, of no violations of the Pasadena Plan up to and including the present, save that it is the contention of Plaintiffs that the appointment of the two Assistant Superintendents and the Director of Elementary Curriculum on July 10, 1973, the appointment of the Principals of the Wilson and Fundamental Schools on July 31, 1973, the failure of the Board to have the Black Task Force and the Mexican American Task Force for the school year 1973-74, the establishment of the Fundamental School, and the effect of the Fundamental School on the sending schools are each violations of said Plan.

4. No objections will be registered to the introduction of any of the items of documentary evidence listed on exhibits which

will be attached hereto prior to the time of the hearing on grounds of authenticity or that said documents are not originals.

Dated: February 23, 1974.

A. L. WIRIN,
FRED OKRAND,
JOHN D. O'LOUGHLIN,
JILL JAKES,

By /s/ FRED OKRAND,
Fred Okrand,
Attorneys for Plaintiffs.

J. STANLEY POTTINGER,
WILLIAM D. KELLER,
JAMES STOTTER II,
BRIAN K. LANDSBERG,
SAMUEL J. FLANAGAN,

By /s/ SAMUEL J. FLANAGAN,
Samuel J. Flanagan,
Attorneys for Plaintiffs-Intervenor.

PAUL, HASTINGS, JANOFSKY & WALKER,
LEE G. PAUL,
ROBERT G. LANE,
PETER D. COLLISSON,

By /s/ LEE G. PAUL,
Lee G. Paul,
Attorneys for Defendant Pasadena City Board of Education.

Volume 4, Page 689.

ARGUMENT OF COUNSEL.

Mr. Lee Paul, for the Defendant Pasadena
City Board of Education.

1 March 1974.

Mr. Paul: Your Honor, the Pasadena plan, as your Honor approved in March of 1970, which is the date here, I don't believe, your Honor, that the draftsmen or this court on that occasion when the plan was approved ever considered the provisions of this plan which are now relied upon by the court to say that we have been on notice throughout that we had to conform constantly and continually with the no majority of any minority provision and that that provision relating to any school in 1970 was intended by the court to have application to any school in 1974.

The Court: Mr. Paul, I can assure that I may not know what the writers of this plan had in mind when they submitted it to me because I haven't asked them why. And I think you have to ask them why to know why they do things. But I can assure you that I studied this plan and I knew the plan. I knew what I thought it was going to accomplish. And I thought that it was going to accomplish, if executed in good faith, that Pasadena would never be back in this courtroom again. Now, that meant to me that at least during my lifetime there would be no majority of any minority in any school in Pasadena.

1974 EXHIBITS.

PLAINTIFFS' EXHIBIT I.

MINUTES OF THE SPECIAL MEETING
PASADENA CITY BOARD OF EDUCATION
PASADENA UNIFIED SCHOOL DISTRICT

TUESDAY, JANUARY 27, 1970.

Meeting No.	Page No.
No. 31	17,275

The Pasadena City Board of Education, acting as the Governing Board of the Pasadena Unified School District, met in Special Session on Tuesday, January 27, 1970, at its regular place of meeting, 351 South Hudson Avenue, Pasadena, California.

The President called the meeting to order at 2:45 p.m.

The following members were present: Mr. LuVerne LaMotte, President, Mr. Albert C. Lowe, Vice President, Dr. Joseph J. Engholm, Mr. Bradford C. Houser, Mr. John T. Welsh.

The following administrative officers were present:

Dr. Ralph W. Hornbeck, Superintendent of Schools, Secretary to the Board of Education; Mr. Joseph P. Zeronian, Acting Administrative Assistant to the Superintendent; Miss Grace M. McFarland, Assistant Superintendent for Elementary Education; Mr. Ramon C. Cortines, Assistant Superintendent for Secondary Education; Mr. A. C. Zemba, Acting Business Manager; Dr. Dean S. Rasmussen, Administrative Director, Instructional Services.

Purpose of Meeting.

The Special Meeting was called to discuss and take action on possible appeal regarding: Nancy Anne Spangler, et al., Plaintiff, United States of America, Plaintiff-Intervenor vs. Pasadena City Board of Education, et al., Defendants.

Motion and Action Lost.

Mr. Welsh Moved that an appeal be made, that the office of County Counsel be requested to handle the appeal, with the understanding that if they are unable to handle the case the appeal would still be made. The motion was seconded by Mr. Houser and by a vote of 2-3 the motion was defeated. (Mr. Welsh and Mr. Houser voted "Aye", Mrs. LaMotte, Mr. Lowe and Dr. Engholm voted "Nay".)

PLAINTIFF'S EXHIBIT III.

[A handbill]

The Committee* for a BETTER WAY Endorses . . .

[Photo]	[Photo]	[Photo]
Frank C. Crowhurst	Richard W.	Henry Marcheschi
Financial	Millar, Jr.	President of Manu-
Consultant	Attorney at Law	facturing Company

3 Fathers / 10 Children / Vital Concern

There is a better way to educate our children . . . to unite our community and to lower taxes.

Join this campaign! Tell your friends to vote YES on recall and cast their ballots for Crowhurst, Millar, and Marcheschi. Send your contribution today to help win this important election.

Meet the Candidates at—

Sierra Mesa School .....Wednesday, Sept. 16, 8 P.M
Washington Jr. High.....Thursday, Sept. 17, 8 P.M.
Eliot Jr. High .....Wednesday, Sept. 23, 8 P.M.
Allendale School .....Thursday, Sept. 24, 8 P.M.
McKinley Jr. High .....Wednesday, Sept. 30, 8 P.M.
Pasadena High School .....Wednesday, Oct. 7, 8 P.M.
John Muir High .....Friday, Oct. 9, 8 P.M.

The Committee for a BETTER WAY, P.O. Box 5387
Pasadena, California 91107 Telephone 449-0515

Robert H. Scott, Chairman

* The Committee combines members of the Pasadena Appeal and Recall Committees.

STOP Forced Busing, CUT School Taxes,

Better Education in *every* school.

Vote YES on Recall of School Board

Election — October 13

Elect
CROWHURST — MILLAR — MARCHESCHI
for a Better Way

STOP FORCED BUSING

CUT SCHOOL TAXES

BETTER EDUCATION in every school!

VOTE YES On Recall of School Board
Election October 13

ELECT
CROWHURST — MILLAR — MARCHESCHI
for a Better Way

PLAINTIFFS' EXHIBIT IV.

[A handbill]

Vote YES On Recall

Elect Crowhurst — Millar — Marcheschi

Endorsed by the Pasadena Recall Committee

CROWHURST FILES IN RECALL

Frank C. Crowhurst, a financial consultant, is seeking the seat now held by Dr. Joseph Engholm if Engholf is recalled from the Pasadena Unified School District board Oct. 13.

Crowhurst, 45, headed up the petition drive which led to the recall election being called against three incumbent members of the Board of Education.

He is one of three candidates endorsed by the Committee for a Better Way, containing members from both the Pasadena Appeal Committee and the Pasadena Recall Committee. The other candidates are Richard W. Millar Jr. and Henry Marcheschi.

Crowhurst received a bachelor of science degree in chemical engineering from the University of Southern California and also attended Stanford University Graduate School of Business. He is a member of Tau Beta Pi, honorary scholastic engineering society. During World War II, he served as a naval officer.

The candidate and his wife, Jan, have two children attending Pasadena schools and a son at USC. They live at 1585 Riviera Drive, Pasadena.

Among his civic activities have been service on the YMCA Management Committee, YMCA division leader of membership drive, and the Pasadena Civic Auditorium Improvement Committee. He also is a past president of Don Benito PTA and is a former Cubmaster.

"Although I had not originally intended to be a candidate, I agreed to run because members of both the recall committee and

the appeal committee strongly urged me to continue my fight against the incumbents by becoming a candidate," Crowhurst commented.

Among his aims and goals, he said, are "to re-establish neighborhood schools and return to the traditional concept of local control: to lower taxes by ending forced busing, by reducing high costs of school administration and by eliminating inadequate educational programs, and to support the Appeal Committee in its request to be heard before the U. S. Supreme Court on the issues of neighborhood schools."

Crowhurst said he hopes "to promote basic principles of education, reading, reading comprehension, writing, arithmetic and appreciation of our American way of life.

R. W. MILLAR RUNS FOR SCHOOL POST

Richard W. Millar Jr., is seeking the seat on the Pasadena Unified School District's board now held by Mrs. LuVerne LaMotte, if she is recalled Oct. 13.

Millar, 32, is an attorney who is with the Los Angeles law firm of Iverson, Yoakum, Papiano and Hatch.

He was active on the Pasadena Appeal Committee, which now has merged with the Recall Committee into the Committee for a Better Way, and is one of three candidates endorsed by the combined group. The others are Henry Marcheschi and Frank C. Crowhurst.

Millar and his wife, Nancy, live at 1400 Harding Ave., Pasadena. They have three children.

The recall candidate is a member of the Los Angeles County Bar Association, the State Bar of California and the American Bar Association. He also is a member of the Juvenile Court Indigent Defense Panel.

Among his community activities are service on the advisory board of the Pasadena Head Start Amigos, board of managers

of the Los Angeles YMCA Camp Branch and membership in Town Hall of California.

"Basically I am running because I feel that the present board has failed to adequately represent its entire constituency. The most obvious and most glaring example of this failure is, I believe, the board's decision not to appeal Judge Real's order and allow a higher court to thoughtfully review the case," Millar said.

"If the board had appealed, the citizens would at least have had the satisfaction of knowing that the highest possible tribunal had given its consideration to Pasadena's pressing problems.

"A more subtle example of the board's failure to represent the constituency is, I believe, the new plan that it has adopted," he added.

"Although the plan provides massive expenditures for items such as transportation, it is woefully deficient in basic education matters. The majority of our citizens have been complaining for years that Pasadena has failed to provide a quality education and the new plan assumes that mere movement of students will cure this deficiency.

"It is vitally important that public education in Pasadena be immediately upgraded to insure, not equal opportunity for

[Concluding lines of test are illegible.]

Henry Marcheschi . . . recall candidate

NEW RECALL CANDIDATE LISTS GOALS

"Racial harmony and superior education for every child without destroying neighborhood schools" is one of the goals of Henry Marcheschi, a candidate to succeed Albert C. Lowe if he is recalled from the Pasadena Unified School District board Oct. 13.

Marcheschi, 40, lives at 3745 Startouch Drive, Pasadena, with his wife, Leora, and their four children.

Born in Chicago shortly after his parents immigrated here from Italy, Marcheschi says he experienced prejudice firsthand as a young boy, when he frequently was subjected to derogatory terms referring to his ancestry. He did not even learn English until he was 5, the candidate, who now heads his own company, commented.

Company Founder.

Marcheschi is president and founder of American Telecommunications Corp. of El Monte, which manufactures telephone equipment, and is vice president of the Strategic Industries Association, a national association of small defense-aerospace companies which works closely with congressional committees. He recently was appointed to the Advisory Council of the Small Business Administration.

He received a bachelor of science degree in mechanical engineering from the University of Illinois, and also took graduate level work in management finance and economics.

As an Air Force officer, he received a Commendation Medal for "outstanding and especially meritorious service."

Scout Official.

Among his civic activities have been serving as scout committee chairman for the pack and troop of Post 388, co-chairman of the John Marshall School Banquet and president of his church choir.

Marcheschi said he believes in "tearing down all artificial barriers creating deliberate segregation, resisting coercive government action dictating arbitrary 'racial balance' by every possible means within the law, greater parent control over school curriculum on a community-by-community basis and reduced taxes, with more education at less cost."

He added that "involuntary integration is self-defeating. It will not work! There is a better way."

PLAINTIFFS' EXHIBIT V.
[A campaign newspaper]

Bulk Rate
U.S. Postage
PAID
Permit No. 740
Pasadena, Calif.
91103

EXTRA

Vol. 1, No. 1 Pasadena, California October 1970

CANDIDATES PLEDGE TO END FORCED CROSS-TOWN BUSING

Candidates Explore New Teaching Methods

[Photo]

JUDGE REAL DECISION NOT LAW OF LAND SAY PRESIDENT NIXON, ATTORNEY GENERAL

"Forced cross-town busing and arbitrary racial balance quotas are 'NOT' the law of the land," says Richard W. Millar, Jr., Attorney and school board candidate in the October 13 recall election. "Claims by school board incumbents that 'it's not right to recall board members for obeying the law' are purposefully misleading and totally false," Millar stated. "Judge Real's decision simply is not in concert with those of a majority of other courts across the country, and the failure of the present board to appeal the lower court's racial balance decision was a tragic mistake."

Millar's assertations are backed up by Attorney General John N. Mitchell. Before the Senate Committee on Equal Educational Opportunity on August 13, 1970, Mitchell stated: ". . . there remain basic practical problems which the courts have

[Lines of text are illegible.]

balance must be achieved in the schools." Mitchell went on to say, "My study of the cases leads me to believe that the Fourteenth Amendment DOES NOT incorporate the concept of racial balance." (emphasis added)

President Nixon has also made clear his strong opposition to forced busing and arbitrary racial balance quotas. In his March 24, 1970, statement on school desegregation, the President stated: "I have consistently expressed my opposition to any compulsory busing of pupils beyond normal geographic school zones for the purpose of achieving racial balance . . . demands that an arbitrary 'racial balance' be established as a matter of fact misinterpret the law and misstate the priorities."

"Let me make one thing absolutely clear," Millar states, "Not only will a new school board be able to appeal the Real decision, but we have a firm commitment from the Justice Department they will be on our side in preparing a new plan which restores neighborhood schools in Pasadena."

RETURN TO NEIGHBORHOOD SCHOOL CONCEPT PROMISED BY NEXT YEAR

"Neighborhood schools will be restored in the Pasadena Unified School District, hopefully by January, 1971, certainly by September, 1971." So pledge Frank C. Crowhurst, Richard W. Millar, and Henry Marcheschi, school board candidates in the October 13 recall election.

The candidates will develop a new plan for the District Court immediately upon taking office. With details to be worked out with the Justice Department prior to presentation, the candidates say the new plan will be based upon the following principles:

1. Every school will be made a good school, regardless of ethnic balance "We reject out-of-hand the philosophy that a minority school must be a bad school" say the candidates.

2. Children will go to school where they live—in their neighborhood schools. Boundaries will be determined solely on the basis of school size and the natural geographic area which the school serves.
3. Minority children will be encouraged and assisted to attend schools outside their neighborhood IF THEY VOLUNTARILY DECIDE TO DO SO.
4. As suggested by President Nixon, new innovative methods will be implemented to promote inter-racial harmony and cultural exchanges such as programmed sharing of educational experiences with children from other schools.
5. Minority communities will be given a much greater voice, and therefore greater responsibility, in determining the educational destinies of their children. "The present forced busing plan not only costs over $1,000,000 that should be used for education, but it will harm the minority child most," say Crowhurst, Millar and Marcheschi. "It is precisely because we are dedicated with every ounce of our being to true equal educational opportunity and true integration of all races that we seek office." Crowhurst went on to say, "We want every parent to know the new plan will be implemented with caution and restraint to avoid any further disruptive influence on the education of our children."

[Photo]

Seeking information on a "better way" to help educate the students in Pasadena the three candidates, Henry Marcheschi, Richard W. Millar and Frank C. Crowhurst are taking time during the campaign to see what other schools in the area are doing. Here they inspect a new instruction aid used in a nearby school district that has helped to raise reading levels by 1.4 grade levels in four months.

CROWHURST-MILLAR-MARCHESCHI

Endorsed by Better Way Group

The Crowhurst-Millar-Marcheschi candidacy is supported by "The Committee for a Better Way," which is made up of members from both the Pasadena Appeal and Pasadena Recall Committees.

"We are supporting a slate of candidates," states Robert H. Scott, Committee Chairman, "because it is absolutely necessary to insure a new board majority. The present board is committed to the present forced busing plan, regardless of what higher courts may rule. To end forced busing, it is absolutely necessary to elect a new board majority."

Over 23,000 Pasadena School District residents signed the recall petition initiating the recall election to be held on Tuesday, October 13, 1970.

For a Better Way

Phone 449-0515

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Send Donations To:

Robert H. Scott, Chairman
Committee for a Better Way
P. O. Box 5387
Pasadena, California 91107

PLAINTIFFS' EXHIBIT X.

Minutes of the Regular Meeting — Page No.
April 24, 1973 — 18,102

* * * * *

Mr. Marcheschi left his seat at 7:25 p.m.

* * * * *

Mr. Marcheschi returned and took his seat at 9:20 p.m.

Motion and Action
Ameliorate Disparity

Mr. Sheats MOVED that this school district recognizes that there is grave and urgent community concern about the extent of the disparity between performances of the Black and Spanish surnamed students with that of the Anglo-Caucasian student, as indicated by reason of the test scores, and that this district adopt as its first priority the amelioration of this disparity. The MOTION was seconded by Mr. Lowe and by a vote of 4-0, with Mr. Marcheschi abstaining because he had just returned to his seat, the MOTION was approved and made the action of the Board. Mr. Marcheschi indicated that he would be listening to the tape on the preceding discussion before he casts his vote.

PLAINTIFFS' EXHIBIT XI.
[A campaign letter]

Vetterli-Myers-Newton Very Much Needed for the Pasadena School Board!

Dear Friend:

On March 6, 1973 the fate of Pasadena and it's Public School System will be on the line.

Your financial support is needed *now* to help elect the anti-forced-busing slate of DR. RICHARD VETTERLI, DR. HENRY S. MEYERS, JR. and MR. LYMAN NEWTON to the Pasadena School Board.

The majority of the current School Board has comsistently acted against the wishes of the people. They publicly voiced their opposition to the neighborhood school proposition, even though two-thirds of the citizens voted *for* Proposition 21 and *against* forced busing.

We must reverse the current flight of those families with school-age children to other areas. The social and economic impact on the Pasadena Area is being felt by businessmen, homeowners and taxpayers alike.

VETTERLI, MYERS and NEWTON are pledged to restoring neighborhood schools, eliminating excessive educational experiments on our children, restoring discipline in the classroom and reducing administrative overhead which burdens us all, and especially those who have passed their working years.

Knowing that you share concern for the future of Pasadena Schools and our community, we ask your financial support for the election of VETTERLI, MYERS and NEWTON. We need your contribution *now*. Our opposition is organized and has large financial support from various pressure groups. We have excellent candidates, but they cannot be elected without *money*.

Please send your contribution to The Committee to Elect VETTERLI, MYERS and NEWTON, P. O. Box 5974, Pasadena, Calif. 91107. Thank you.

Sincerely,

/s/ PERRY OSBORNE,
Perry Osborne,
Finance Chairman.

P.S. Great News ! ! ! You may deduct contributions to qualified candidates or a committee organized exclusively to support candidates for a local elective office. If you file a joint return you may deduct up to $200. on your California income tax return. On your Federal income tax return you may deduct up to $100. or take a credit directly against your tax up to one-half of your political contribution with a maximum credit of $25.00. Each one of our candidates, as well as the Committee to Elect Vetterli-Myers-Newton are qualified for the above deductions or credit.

P.O. Box 5974—Pasadena, Calif.—449-0515—
Gene Wiberg, Chairman

PLAINTIFFS' EXHIBIT XII.
[A campaign newspaper]

Bulk Rate
U. S. Postage
PAID
Permit No. 39
Pasadena, Calif.

School Board Election Tuesday, March 6th

EXTRA

Vol. 1, No. 3 Pasadena, California February 20, 1973

CANDIDATES PLEDGE TO END FORCED BUSING—RESTORE QUALITY EDUCATION IN THE PASADENA SCHOOL SYSTEM

[Photo] [Photo] [Photo]

Dr. Richard Vetterli Dr. Henry S. Myers, Jr. Lyman Newton

Three Concerned Citizens Candidates for the Pasadena School Board Dr. Richard Vetterli, Dr. Henry S. Myers, Jr., and Lyman Newton are deeply concerned with the progressive deterioration of the Pasadena School System.

They are determined to work endlessly, Within the Law, to stop forced busing of students. They believe the courts will approve a properly conceived student assignment plan which provides strong motivations toward voluntary integration while restoring the fundamental right of white and minority children to attend their neighborhood schools, if they so desire.

Restoration of neighborhood schools, they believe, is an absolute must if we are to end the precipitous decli[illegible] of white enrollment in our schools and maintain an ethnically stable and viable multi-racial community. They are pledged to fight increases in school taxes and, most important of all, to restore quality education and equal educational opportunity in the Pasadena Unified School District.

STOP FORCED BUSING
VOTE for Vetterli—Myers—Newton

PLAINTIFFS' EXHIBIT XIII.
[A handbill]

STAR-NEWS

Page 15—Pasadena, Calif., Thursday, Jan. 4, 1973

[Photo]	[Photo]	[Photo]
Dr. Richard Vetterli	Dr. Henry Myers	Lyman W. Newton
. . . for new appeal	. . . freedom of choice	. . . very much needed

THREE ANTI-SCHOOL BUSING CANDIDATES FILE FOR SEATS

Three men campaigning as a team to stop forced school busing in Pasadena filed Wednesday for separate seats on the city school board.

Dr. Richard Vetterli, Lyman W. Newton and Dr. Henry Myers filed for office numbers one, five and three, respectively.

At a press conference they said their primary goal would be to capture three seats in the March 6 school board primary election. Once elected, they said they would attempt to stop forced busing and return students to neighborhood schools.

The three will campaign together under the banner "Committee to Elect Vetterli, Myers and Newton," and the slogan "Very Much Needed."

"We may disagree on the mechanics but we're in complete agreement on what to do," said Myers, who is head of research operations for C. F. Braun & Co., in Alhambra.

Newton, who is manager for the west coast office of Baird-Atomic, Inc., outlined the four main goals of the three candidates:

(1) Stop forced busing of students and return them to neighborhood schools.

(2) Return order and discipline to schools.

(3) Emphasize quality education and meet needs of particular students.

(4) Maintain fiscal responsibility with the school district budget.

Asked if forced school busing to attain integration could be legally stopped, Vetterli, an associate professor of political science at Pasadena City College replied: "The whole temper of the country is turning against the practice and the feeling in Washington we feel will be reflected in the Supreme Court."

Specific Ideas

Vetterli said he believes the school district would be allowed to submit a new court appeal. He added that the three had specific ideas on how to redesign certain aspects of the school district but they would rather "hold them in abeyance."

Anti-Busing Trio Enters Campaign

Myers said a "freedom of choice plan looks like a good idea to us." He did not spell out specifics of the plan and rejected a comparison between the candidates' plan and that of Henry Marcheschi's plan for schools. Marcheschi is a school board member not up for reelection.

The three were the fourth, fifth and sixth candidates to file for three school board offices.

Benjamin Crocker, a lawyer; Frank Fleck, a stockbroker, and Vetterli have all filed for office number one. That office is now held by Mrs. LuVerne LaMotte, president of the school board. As of late Wednesday afternoon, she has not filed for the office.

Incumbent Files

Mrs. Ann T. Hight, a housewife, and Newton have filed for office number five. Mrs. Hight is the incumbent.

Myers has filed for office number three. Albert Lowe, the incumbent, had not filed for the office as of late Wednesday. Filing for the offices will close Friday.

Vetterli grew up in the San Gabriel Valley and attended Alhambra High School. He has a BA from Brigham Young University, a graduate certificate in public administration from the University of Utah and Masters and PhD degrees from the University of California.

He was administrative assistant and public relations analyst for the Utah Water and Power Board. He also served as vice-president and member of the board of directors of a concessionary firm in San Jose. He presently serves as vice-president of World Wide Villas.

He has lectured extensively to civic and religious groups. He has authored four books, the latest, "The Socialist Revolution" is a study of totalitarian systems.

Dr. Vetterli and wife, Deen, a former Los Angeles school teacher, have a pre-school age son.

"The entire country will be watching the March 6th election," said Dr. Vetterli. "The tragedy of Pasadena's school system must be reversed. Dr. Myers, Mr. Newton and I are dedicated to returning high education standards to our city; not only for the future of our own community, but as an example to similar communities throughout the nation."

Newton, who is 36, has lived seven years in the San Rafael area of Pasadena. He and wife, Gloria, have three children, Mari, 11, Mark, 9, and Lori, 6.

Only Lori attends a public school in the Pasadena School District. The other two children attended public schools until the busing issue forced them out of their neighborhood, said Newton.

Newton stressed his goal of reunifying Pasadena. "This can be accomplished through the reuniting of the neighborhood by eliminating forced busing; as voiced by a two-to-one margin on Proposition 21 in last November's election," he said.

"We must return order and discipline to our schools by emphasizing individual responsibility. Our classrooms must em-

phasize quality education by meeting the particular individual requirements of each student and not a mass movement of bodies onto society," he said.

These actions, Newton said, will encourage new families to relocate in Pasadena. New families would spread the tax load, stabilize real estate values and eliminate the flight of citizens who feel threatened.

Myers, a resident of Pasadena for 20 years, earned a chemical engineering degree from Penn. State University and a Master of Science and Doctor of Philosophy degrees.

He has authored more than 20 technical papers published in scientific journals and was awarded several patents, he said.

He and wife, Elizabeth, have four children. One of them, Tricia, 19, was valedictorian of Pasadena High School last June.

Dr. Myers believe that forced busing is causing "incalculable" harm to the public school's system and hurting race relations. He believes discipline, respect and common courtesy must be restored to the classroom. He said violence intimidation and fear must be eliminated.

Vetterli—Meyers—Newton

Very Much Needed

Committee to Elect Vetterli—Myers—Newton
Box 5974, Pasadena, California, 91107
Gene Wiberg, Chairman
Phone 449-0515

PLAINTIFFS' EXHIBIT XIV.

The following Candidate's Statement of Qualifications has been filed with the Registrar of Voters Office Pursuant to Sections 10012.5 and 10012.6 of the Elections Code of the State of California. All candidates had the opportunity to submit such a statement. The cost of preparation, handling and mailing is paid for by candidates submitting statements. This enclosure does not contain statements for all candidates. The complete list of candidates appears on the sample ballot.

Statement of Qualifications of
DR. RICHARD VETTERLI

Candidate for Governing Board Member
Pasadena Unified School District Office No. 1

March 6, 1973

Occupation: Associate Professor of Political Science, Pasadena City College.

Education: BA, Brigham Young University, Graduate Certificate in Public Administration, University of Utah, Masters Degree and Dr. of Philosophy Degree from the University of California.

Family: Married to Deen Vetterli, former Los Angeles School teacher. Father of one pre-school age son.

Experience: Educator, businessman, writer and lecturer.

Platform: End Forced Busing. The present "Pasadena Plan" is responsible for white families leaving the school district. This destroys our tax base, our schools and our community.

Promote Fiscal Responsibility. Funds can be better spent by concentrating on education rather than wasteful social experiments and inflated administrative and business costs.

Hold the Line on Taxes. We have reached the saturation point. If taxes are increased in Pasadena, many of our elderly citizens with fixed incomes will literally lose their homes. Current funds can be better expended.

Return to Constructive Discipline on Our Campuses. Children can not learn in an atmosphere of fear and intimidation. Safety of students is primary.

Return to Basic Education. Basic educational skills must be reintroduced into the school system. Our children are being cheated. Our once-fine school district has become an academic disgrace.

PLAINTIFFS' EXHIBIT XV.

The following Candidate's Statement of Qualifications has been filed with the Registrar of Voters Office pursuant to Sections 10012.5 and 10012.6 of the Elections Code of the State of California. All candidates had the opportunity to submit such a statement. The cost of preparation, handling and mailing is paid for by candidates submitting statements. This enclosure does not contain statements for all candidates. The complete list of candidates appears on the sample ballot.

Statement of Qualifications of

LYMAN NEWTON

Candidate for Governing Board Member

Pasadena Unified School District Office No. 5

March 6, 1973

Age: 36

Occupation: Sales Executive.

Education: Bachelor of Arts Degree—University of Washington.

Personal: Married 13 years.

Father of three children—one in Pasadena City Schools and two in The Chandler School. He and his wife, Gloria, have lived in the San Rafael section for the past seven years. In his youth he was an Eagle Scout.

Interests: Gardening. Treasurer of the Pasadena Southwest Little League Board of Directors. Employed by Baird-Atomic, Inc., where he manages their West Coast office responsible for all Nuclear Medical Instruments sales.

Issues: Newton will:

Eliminate Forced Busing as mandated by the vote of Proposition 21 in last November's election, thereby reuniting the neighborhood and consequently the city.

Return Order and Discipline to our schools by emphasizing individual responsibility.

Emphasize Quality Education by meeting particular student needs rather than a mass movement of bodies onto Society.

Work Within the Allotted School Budget, concentrating all these available dollars toward a superior educational system. This would eliminate the further flight of citizens who currently find their situation threatened either by unstable real estate values or unfair tax loads.

PLAINTIFFS' EXHIBIT XVI.

The following Candidate's Statement of Qualifications has been filed with the Registrar of Voters Office pursuant to Sections 10012.5 and 10012.6 of the Elections Code of the State of California. All candidates had the opportunity to submit such a statement. The cost of preparation, handling and mailing is paid for by candidates submitting statements. This enclosure does not contain statements for all candidates. The complete list of candidates appears on the sample ballot.

Statement of Qualifications of

HENRY S. MYERS, JR.

Candidate for Governing Board Member

Pasadena Unified School District Office No. 3

March 6, 1973

Occupation: Chemical Engineer.

Education: BS, MS, PhD, Penna. State University.

Resident of Pasadena for 20 years. Chemical engineer, BS, MS, PhD, Pennsylvania State University. Head of Research Operations, C F Braun & Co. Author of more than 20 technical papers and several patents. Active in school board campaigns for many years in behalf of neighborhood school candidates. Father of four children, all of whom have attended Pasadena schools.

Dr. Myers believes

* *Forced Busing* has been a total failure. It is seriously harming both our educational system and race relations. It should be eliminated as rapidly as possible.
* *Discipline, Respect, and Common Courtesy* must be restored to the classroom.

* *Acts of Intimidation, Assault, and Violence* must be dealt with firmly—with fair and equal treatment. Teachers must be strongly supported by the administration and the Board of Education.
* *Vocational and Occupational Training* need to be expanded.
* *Ability Grouping* must be reinstated.
* *Costs* continue to rise in spite of drastically reduced enrollment. For many of our elderly citizens on fixed incomes, taxes have already reached disaster proportions. Economies are long overdue.
* *Much Work* will be required to halt and reverse the rapid deterioration of our schools in Pasadena. Results of the policies implemented by the present school board are tragic. It's time to send in a strong new team.

PLAINTIFFS' EXHIBIT XVII.

VOTE-O-GRAM

Stop Forced Busing — Vote March 6th

Urgently Need Your Help. School Election Next Tuesday Last Chance to End Costly Forced Busing Now Destroying Our Community. Must Elect Vetterli, Myers and Newton to Join Me on School Board. Essential We Reestablish Neighborhood Schools, Restore Discipline, Guarantee Every Child Quality Education and Make Each Tax Dollar Count. Election Will Be Very Close, Repeat, Very Close. Your Vote Can Make the Difference. Please Call Relatives and Neighbors to Vote With You For Vetterli, Myers and Newton March 6. There Will Never Be Another Election More Important to Our Community. Thank You Very Much.

HENRY MARCHESCHI
Member, Pasadena School Board

PLAINTIFFS' EXHIBIT XVIII.

Minutes of the Regular Meeting — Page Number
December 18, 1973 — 18,376

* * * * *

Modifications to Pasadena Plan.

Mr. Marcheschi stated that while copies of his proposed modification plan for elementary schools are being distributed, he would appreciate cooperation in complying with the following procedure: first, he will make his presentation; second, Mr. Sheats will offer his comments; third, comments by individual Board members; fourth, questions from the audience for further information or clarification; and fifth, comments from the audience expressing for or against the plan. He then turned the gavel to Vice President Myers to serve as chairman, while he made his presentation.

Mr. Marcheschi stated that the presentation is divided into three parts; he will first state why he believes modifications are necessary; Mr. Hagen will present some information relative to ethnic shifts and the resultant problems that now exist—information compiled at Mr. Marcheschi's request; a detailed explanation of the plan by Mr. Marcheschi followed by comments from the Superintendent on the alternatives offered in the modification plan, and Dr. Zeronian on preliminary costs. He would conclude with comments as to why he believed the plan should be adopted by the Board. A copy of the complete proposal is attached.

Mr. Marcheschi recalled that last September the Board majority had authorized the hiring of legal counsel and for the Board President and the Superintendent to bring together a task force to evolve a modification of the Pasadena Plan. He continued by stating that the Committee was formed and met on five occasions, following which he became ill, and subsequently the

Committee ended its efforts. The Plan being presented contained much of the input that was dicussed by the Committee and also contained input from the staff, but Mr. Marcheschi wanted it clearly understood that the proposed modification was essentially his proposal. He then called on Mr. Hagen to present statistics on the present composition of the schools and their compliance with the court order.

As background information, Mr. Hagen recalled that the key stipulation of the Court Order was that no school should have an enrollment of the majority of the minority; the first year Pasadena sailed into the Plan there were three schools with more Black students; however, no school had a majority of any one minority; but the following year there were four schools with more Black students, with Loma Alta having over 50% Black; two years ago, there were 12 schools with more Black students, four of which were over 50% Black; and this year there are 21 with five having over 50% Black. He added that although 90 students were redistricted last year from Loma Alta, its impact did not have the desired effect to change the ethnic configuration and that a similar situation is now occurring at Muir.

Mr. Marcheschi then stated that irrespective of how one may feel regarding modification, based on the historical data just presented, there is either the need to move immediately toward a vast redistricting program for next year in order to bring what by that time will be a considerable more than five schools in line with the court order or be in a situation where there will be many more schools where the majority of the minority will exist. He believed that in addition to these facts was the additional fact that before the Pasadena Plan went into effect in September, 1970, there were 17,859 Caucasian students in the district, but this past year the figure dropped to 11,188 or a loss of 6,671, or over 37%. He said it would be folly to blame all of this drop to the Pasadena Plan but he believed the point could be made that the Pasadena Plan was a significant contributor and that

unless this trend is stabilized, the mutual desire for quality education in an integrated setting is going to be an unachievable myth because there will not be sufficient Caucasian students to provide meaningful integration. He believed that all reasonable people agree that some modification is necessary, and by using an overhead projector he proceeded to explain his modification plan beginning with the dividing of the school district into four separate zones, which are precisely the zones used to establish the Pasadena Plan and closely represent the ethnic composition of the district, but eliminates specific school attendance boundaries, allowing any parent living within a given zone to send his child to any school in that zone with the district providing the transportation. Another modification was the return to the kindergarten through six grade type of program of each elementary school. In order to provide freedom of choice and affirmative action toward an integrated education, each school zone will provide distinct and unique educational alternatives to serve as "magnets" in each of the schools, thereby parents can choose what they believe to be the best school for their children.

Following Mr. Marcheschi's reading of his complete proposal, and at his request, the Superintendent expanded on the educational opportunities listed under Exhibit A in the attached plan, resulting from a committee composed of Dr. Zeronian, Mrs. Jeanne Comerford, Mrs. Hession, Mr. Edward Shutman, and Mr. Rudolfo Medina. He explained further the mini-school within a school concept which any student might attend either at the one at his school of attendance or any other within his zone.

Mr. Marcheschi explained further that because of providing parents with new options, the ethnic balance may be altered at some sites, and if this should occur, it it proposed that the school be paired with a "sister school" with an opposite ethnic makeup, and using district transportation, these schools would share educational programs at least one-half a school day per week. He then called on Dr. Zeronian to offer his preliminary analysis on the cost of implementing this proposal.

Dr. Zeronian then read his memorandum to the Superintendent as follows:

"Having reviewed the proposed modifications to the Pasadena Plan which are to be discussed by the Board this evening, I wish to indicate a number of areas where it is expected that there will be a one-time cost of implementation of these modifications. The following are areas which are integral to the modifications, and it is estimated there will be a one-time increased cost, either during the latter part of this fiscal year or during the coming fiscal year.

Item	Estimated Cost
"Minor modifications to buildings and playgrounds	$20,000
Transfer of furniture, equipment, books and supplies	30,000
Staff and curriculum development programs	15,000
Public information and communications programs	20,000
Transportation modifications	75,000 to 100,000
Implementation of mini schools	120,000 to 240,000
	$280,000 to 425,000

"The above are estimates made from the best knowledge that we have at this time as to how the modifications proposed would be implemented. It appears at this time that the maximum one-time increased cost will not exceed $425,000. The cost conceivably can be lower, as indicated by the range shown above. These one-time increased costs are manageable and within the resources available to the district provided any or all of the following take place:

"1. That consideration and approval be given to reallocations of funds during the next fiscal year from areas where they are currently being spent to offset these one-time costs.
2. That consideration and approval be given for the increasing of the tax rate.
3. That consideration and approval be given to the consolidation of a number of schools."

Mr. Marcheschi pointed out that it was costly, too, to initiate the Pasadena Plan, and noted that there were some things not included in this proposed modification—it does not contemplate the closing of schools which is an essential issue; it does not contemplate the ninth grade which will be discussed on the fifteenth; nor does it refer to the community development school, because it was believed that an initial plan be submitted first, as quickly as possible, to the court, and revisions submitted as needed at later dates.

He concluded by stating that he anticipates criticism to his proposal—that it would produce segregation in the school district, but explained that his definition of integration was not achieved by forcing minority children to attend certain schools, but by offering and encouraging minority students to attend any school of their choosing. He believed his plan offered educational alternatives and included a competitive process which would provide improved educational opportunities for all children. He said alternatives have been successful in Pasadena as exemplified by over a 1000 applications received for the Fundamental School. He believed his plan should be adopted and the attorneys instructed to seek approval of it before the courts.

Mr. Sheats said that it was contemplated that he would comment on the proposed plan. He noted that resources from the $50,000 for a law firm, the Superintendent's Office and staff were used in the development of the Plan, yet he had only received his copy the night before (Monday, December 17) with further refinements delivered to him this afternoon. He believed the proposed plan resegregated the district and he drew attention to Part 3 of the proposed plan. He said that if people wanted freedom of choice, they would have legislated that freedom of choice, and indicated that it has been demonstrated that freedom of choice by its very nature caused segregation, and that is why the district had adopted the Pasadena Plan. Mr. Sheats commented that Mr. Marcheschi never indicated why the Pasadena Plan came to being—that it was the result of the

court order which found the district as having deliberately segregated its races and had order the school district to desist from that type of enterprise, and present a plan to integrate its schools.

Mr. Sheats then gave historical data which he believed would point out that before the institution of the Pasadena Plan, Pasadena was a much more segregated school system; that prior to 1970, there was complete racial segregation in this community and that in the school year 1969-70, there were eight schools with predominantly Black enrollments of between 60-95%, and at the same time there were 27 schools which had overwhelmingly more Caucasian students and nobody said anything about it. He gave his definition of segregation as being the separation of the majority groups by deliberate action. He believed that the Pasadena Plan had actually worked for three years and unless it was derailed, it would become so successful that it would be difficult to doubt its efficacy.

Because of the Pasadena Plan, Pasadena had received national attention and acclaim, and he believed rightfully so, for the creative way it had sought to meet very old, very emotional and very complex problems—the issue of racial and ethnic segregation. He felt that because all children were valuable and capable of achievement, care should be exercised before rushing into final consideration of adopting these modifications. He added that what is done here in Pasadena will be regarded in every school district in the nation which has an appreciable ethnic race minority.

Mr. Sheats said that first, it was inconceivable to him that at this period of austerity, that such a plan could be considered without much more definitive information as to what such a plan would cost; secondly, what were the number of students being considered and what about plans for the magnet schools; thirdly, had the administration looked at this plan evaluated it and if so, what was its recommendation, and if not, why not. He believed the administration had a right to support its

recommendations and recalled that the Pasadena Plan required the administration to make recommendations.

Mr. Sheats predicted that if this plan by some miracle were accepted by the courts, it would spell the death knell of the Pasadena school district and would indicate that there were still some who are incapable of understanding the nature of human interaction. He named Mr. Marcheschi as evidence of lack of good faith and asked how people who claim to have the interest of the minority people and who claim they really desire to have their input, yet prevented him, a Board member, from participating in the formation of the plan. He added that the plan had nothing to commend itself to.

Mr. Sheats then offered his services, free of charge, rather than pay $50,000 to a law firm. He said he would urge the services of such men as Mr. Joseph Wyatt and others to join him, and with the help of the administration, the State Bureau of Intergroup Relations, the U. S. Department of Education, and experts in the community, and in a cooperative way modify the Pasadena Plan to take care of the problems which have developed in a way that will demonstrate good faith, present Judge Real with a modification proposal with assurance that it will receive his approval. A standing ovation was given Mr. Sheats following his remarks.

Mr. Marcheschi expressed his appreciation for the sincerity and civility of Mr. Sheats' comments, adding that he has never doubted Mr. Sheats' sincerity and hoped that Mr. Sheats never doubted his. He added that Mr. Sheats' input on this question had been known rather substantially for a long time.

To Mr. Marcheschi's question, Mr. Sheats replied that he had received the Plan on Friday night (December 14) and Mr. Marcheschi that he did not believe there were any major modifications between Friday and today.

Mr. Marcheschi added that Mr. Sheats had established a very meaningful case for not going back to the pre-Pasadena Plan

and it was not proposed to do so, if only for the simple and logical reason that the district would again find itself mandated. He welcomed Mr. Sheats' efforts to go out and produce a modification plan. He recalled that in the past 2½ years this was the first time Mr. Sheats had admitted to the fact that modifications were needed. He challenged Mr. Sheats to address himself to the percipitous loss of Caucasian students. He added that the resolution presented was a plan to present to the court for approval, and while he is not pessimistic about it as Mr. Sheats, the legality of it will be decided by the courts. He believed the present course with the Pasadena Plan will within three or four years find the district without Caucasian population that makes integration possible.

Mr. Sheats laughingly replied that he would then run for mayor. Mr. Sheats commented that he had never stated that the Pasadena Plan was sacrosanct and cast in concrete. He added that he has said that there are some very simple modifications that can be constituted. He noted that between 1960-70 the Black population in Altadena alone had grown from 2½% to 27%. He believed a positive attitude toward the Pasadena Plan would go a long way to stabilize the community. He again reiterated that the most significant find of change would occur by involving the people themselves—those who have demonstrated competence, interest, dedication, etc. to assist in formulating modifications. Again, he asked why the administration was not given on opportunity first to present a plan for modification. He hoped that serious consideration will be given to this suggestion and the proposed modifications not adopted. He concluded by recalling that the Pasadena Plan was adopted as Board Policy and asked if Mr. Marcheschi was proposing to change the policy and if so, was the procedure being followed.

Mr. Newton and Dr. Vetterli indicated they had no comments to make at this time.

Dr. Myers commented that the idea of mini schools was creative but questioned the practicality of implementing this

concept immediately in all of the schools, and did not see any particular significance to the overall attractiveness of the plan.

There followed some discussion on the mini school and the magnet school concepts.

The Superintendent explained that everyone must go to the magnet school. The mini school idea was not developed for this particular plan and was not suggested as an immediate situation, but suggested as an alternative and that many primary schools do have alternatives where parents have choices such as team teaching, non-graded classrooms, contained classrooms, etc.

Mr. Marcheschi added that the school district was committed to provide alternatives and did not see all of the 28 schools operating immediately with mini schools but possibly over a period of time.

Mr. Sheats then asked the Superintendent if he had approved the plan. The Superintendent replied that Mr. Marcheschi had stated earlier that this was his plan, and it was incumbent upon the staff to make the plan successful once it was adopted or resign their jobs. He added that when Mr. Marcheschi had asked him where he stood on this particular issue, he shared with him his concerns and reservations. However, he would make it successful or attempt to with the help of the staff and parents in the community.

Mr. Sheats said that this whole matter was now getting down to the crux of the problem, and added that the Superintendent was under court order and had administrative responsibilities. He wanted to make it very clear that it is a life and death problem and he was not willing to play politics about it, that the end of the line was reached regarding temporizing. He again asked Mr. Marcheschi if it was contemplated to ask the Superintendent to give an objective evaluation of these proposals before the Board acts on it.

Mr. Marcheschi replied "No", and explained that the Superintendent had expressed publicly that he believed some modifica-

tions were required to the present plan, and when Mr. Marcheschi had asked what these modifications might be, the Superintendent had replied that he was not prepared to propose such modifications. Mr. Marcheschi added that he personally felt he would prefer to keep the Superintendent and staff in on a political position in this particular modification, so when he had specifically asked the Superintendent if he could support the modifications and make them work if adopted by Court, and he had answered affirmatively.

Appearances Before the Board.

Mrs. Frances Dyer, Altadena: Said she had attended the task force meetings and at no time did she see anything concrete although a lot of questions were raised. She asked if anyone from the committee had contributed to this finished product.

Mr. Marcheschi replied that he had not sought staff recommendation and the attempts of the committee were very unsuccessful, that after five meetings they were not able to recommend or submit recommendations.

Mr. Newton added that as a member of the Board on the committee, many of the ideas in the proposed modifications were either mentioned or discussed at the meeting. Mrs. Dyer replied that she heard it discussed but could not recall anyone saying they were in favor of it.

Mr. Robert Paul DeVon: Said he did not know any of the gentlemen on the Board, but appreciated Mr. Marcheschi drawing attention to the proposal and to Mr. Sheats for making it understandable and open people's eyes.

Mr. Al Romo: Believed Spanish speaking people were caught in the middle and that some of the ideas presented were untested. He referred to the many bilingual programs under ESAA and ESL which were tested and proven first. He asked if the return in the ninth grade to the junior high school would disqualify federal funding.

Mr. Marcheschi replied "no" to the latter question, and commented that the Spanish speaking contingent in this community is growing faster than any other minority, and assured Mr. Romo that there was nothing in the modifications other than to stimulate Spanish speaking pupils, adding that for the first time lower socio-economic students would have the same chance as those in the upper socio-economic students. He added that he was not proposing this evening that the Pasadena Plan be modified but that a resolution be presented to the court requesting that a modification be made, and with the concurrence of the Board, this modification would be presented and that such a proposal might bring some recommendations from the court which might require that changes be made.

Lionel Soracco, Teacher: Asked how many students would be involved in the mini schools.

Mr. Marcheschi replied that it would be based on how many parents opt for the mini schools, and to another question raised by Mr. Soracco regarding what he believed to be east and west division of the four zones, Mr. Marcheschi replied that he was not proposing that there would be racial balance in each school but there would be an integrated situation where no one is barred from any school of his own choosing.

Gary Frances, USC Student: Noted that earlier in the evening, students were the first to give Mr. Sheats a standing ovation, and believed students should be given a voice and be involved in the decision process since it concerned only them.

Mr. Marcheschi replied that these proposed modifications covered only grades K-6, and did not involve the secondary schools.

Mr. Frances mentioned that Mr. Sheats had spoken to his class at the University of Southern California, and invited Mr. Marcheschi to also present his ideas to the class, which Mr. Marcheschi accepted.

Mrs. Ann Pursell, Pasadena: Asked what was to be done, if one school had more applicants than it could handle.

Mr. Marcheschi replied that the first fact to be considered was that of capacity at each school, and the second component would be the use of transportables, but believed that the most important thing was that if one school gains such popularity, then perhaps it should be emulated in other schools.

Jim Hight, student: Said he had seen this sort of plan before and believed it was doomed to fail because it would result in Black mini schools in White areas and White mini schools in Black areas. He added that students had been working for the Pasadena Plan for the past 3½ years and they will not be segregated.

Frank Barbegello, Student: Said that when he looked at the Plan a few hours ago, he thought it was a nice idea, but it was bad because in no way would parents living in the Willard area send their children to Lincoln and again, there would be segregated schools, and the students had a right to attend integrated schools.

Mr. ZinZin: Asked what would happen if a school in a White area was completely filled with White students living within its radius, then what recourse would the Black students have.

Mr. Marcheschi replied that analysis prepared by Mr. Hagen indicated that each school would still have significant capacity to enroll anyone who wished to attend. Mr. ZinZin believed that the proposed plan would only encourage racists and bigots in the southern states to follow similar courses to segregate their schools. Mr. Marcheschi replied that he knew of no school district that could ever get court approval of a plan for segregation.

Mr. Robert L. Salley, Senior Vice President of the Pasadena Federation of Teachers: Read a statement seeking clarification of the effort to obtain relief from the desegregation order of Judge Manuel Real. In the statement Mr. Salley believed the full requirements of Section 1016 of the Education Code was

not fully complied with, especially as it concerns what he believed to be the "open-ended" aspects of the contract first raised by Mr. Sheats and shared by others; he also requested clarification of the language between the contract and the Board Report 79-B, and what would happen if the $50,000 currently allocated to the legal cause was absorbed, would additional funds be allocated.

During the reading of the full statement, Vice President Myers, still serving as chairman, noted that Mr. Salley had exceeded his three minutes according to policy.

Motion and Action
Waiver 3 Minute Requirement

Dr. Vetterli commented that a good deal of work and thought had been given to the preparation of this statement and Moved that the three minute limitation be waived and Mr. Salley be allowed to complete his reading of the above mentioned statement. The Motion was seconded by Mr. Sheats and by the unanimous action was approved and made the action of the five-member Board.

Mr. Edward Malecki, Altadena: Contended that the present Board assumed that because they were elected, that it was a mandate of the people in the community, and presented statistics which he believed indicated that only 26% of the voting public had participated in the election.

Dr. Vetterli replied that in the polls last year, 89% of the people in this country indicated their preference to eliminate forced bussing and recalled the overwhelming response from the people against forced bussing under Proposition 21.

Dr. Vetterli added that a number of things had come into the picture during the Board campaign, which confused many people such as racism; and it was also a known fact that once an election reaches a certain point and a trend established, the results from that point on do not change appreciably.

Dr. Vetterli also noted that people vote for persons in whom they had confidence and who they think would find answers to their problems; and recalled that the issue was forced cross-town bussing and the people voted for those who, they believed would come up with a plan.

Mr. Saul Glickman, President of the Pasadena Federation of Teachers: Read a statement referring to a survey conducted when the "New Pasadena Plan" was presented a year ago by Mr. Marcheschi, and noted that the Pasadena Plan ranked extremely favorably in all aspects and the "New" plan ranked among the lowest in all aspects. He believed there was no significant difference between the proposal heard tonight and that of a year ago. The proposal was rejected by the staff and the community then, and it was his organization's opinion that if the same survey were conducted today, the results would be the same.

Mrs. Ruby Williams; President of Pasadena Chapter NAACP: Said she had so many questions to ask it would take until morning, and with regards to a reference to a comment made by Dr. Wilson Riles, which was referred to earlier by Mr. Marcheschi, Mrs. Williams commented that anyone could take a part of a statement and interpret it any way he wished. She believed Dr. Riles had stated that he wanted the best schools for his children when he had moved to Sacramento, and he had enough money to buy where the best schools were. She added that she and others were aware that there are some schools in certain neighborhoods which are better than others. She referred to Henry Wallace who was so opposed to integrating schools in Alabama, but was recently seen crowning the homecoming queen at the University, who was a Black girl. She believed people changed and if concerns are discussed in a positive way, they are resolved. She believed the reason Altadena suddenly became 25% Black was that restrictions for housing were removed. She concluded by stating that Black people are Americans and the discussions should not be based on Black children or White children but "our children", and added that if this plan segregates schools the NAACP will fight.

Mrs. Maureen Murphy, Teacher at Don Benito: Said she was totally opposed to going back to the K-6 plan recommended in the proposal and would be willing to strike for it. She then read a statement from the teachers and P.T.A. opposing this move.

Mrs. Eleanor Valentine, Teacher, Field Elementary School: Read a statement from the Field Elementary School Curriculum Advisory Committee expressing concern about the future of the modular program currently existing so successfully at that school, if the district should return to K-6 plan of operation.

Mrs. Kathy Haight, Student: Disagreed that the plan did not involve high school students—she believed it did because kids are integrated and that integration is a slow but sure process and should begin in the primary schools.

Mrs. Norma Sandusky, President, Pasadena Education Association: Said she would not read a lengthy statement, but the PEA would not stand idly by and watch three years of work committed to quality education be camouflaged by words and a single-minded modification proposal.

Brad Chable, Evening High School: Believed that by pairing schools ½ day a week was only legalizing segregation, to which Mr. Marcheschi replied that students had the freedom of choice to attend any school they desired.

Mr. Sheats stated that if the Board puts this to the courts, he will testify against it and other matters which have come up since the new Board came into existence.

Mrs. Rosemary Gunn, President, League of Women Voters: Believed there was one area where there was a meeting of minds and that was to get a lot of kids that haven't been educated, get educated and the only way to do that is to put some middle class children with the poor children because middle class parents know how to deal with results; that integration was needed to achieve integration of kids, that ½ day a week with a sister school was not really integration; that mini and magnet schools were important to achieve integration and required a high funding priority.

Mr. Marcheschi referred to the Coleman Report and others, that the mixing of children of various socio-economic backgrounds in a room had any effacacy.

Rick Cole, Altadena: Believed the Board should call a special meeting on this matter or put it over to the next meeting because it was a life and death matter to this district, and that it would be a mockery of the public process to do otherwise.

Scott Harrison, Pasadena: As a former ASB President, said there was a Pasadena Plan because there were Pasadena problems. He believed the Black students were having a very difficult time because they have a poor start to begin with. He believed everyone should put 100% effort to alleviate this problem and that bussing was a start, but it did not alleviate it, and perhaps providing equal opportunity was the next step. He voiced his appreciation of the Board's efforts to grapple with this problem.

Mr. David Fishman: Said he would like to direct his questions to Superintendent Cortines, whose opinion he respected, and asked where he stood as the leading educator in this community with respect to the proposed modifications to the Pasadena Plan.

The Superintendent commented that he believed this particular proposal had some very good points in it. As he has stated before, he believed the Pasadena Plan needed to be modified, but he had not come up with any recommendations. He could not give an opinion as yet because neither he nor his staff has looked at the educational advantages pro or con and this is a very different educational concept. He added that he believed in integrating children and did not believe ½ day a week would provide the opportunity for growth and development from young people to adults and contributing members to this community. He added that he was not trying to side step this very complex issue because also involved was the decrease in enrollments and economics.

However, he believed he could make the plan work educationally with the help of his staff, and recalled the horrendous task in the initial efforts of implementing the Pasadena Plan.

Mr. Albert C. Lowe, former Board Member: Wondered if the proposed plan would work adequately against segregation, and Mr. Marcheschi had said it would; also Mr. Marcheschi had indicated it would also provide stability. He said the concept mini schools did not work, because Caucasian parents simply would not opt to send their children other than to the schools in their neighborhood, and he could not understand how a community would voluntarily move its children across town—either Black or White. Insofar as stability, in order to have it, a large majority of the people must want it in order to make it work such as in Berkeley. Mr. Lowe also believed there was greater learning opportunity under K-3, and it did bring many parents of children of various races together which contributed towards greater understanding. He concluded by stating that the more positive approach would be to correct the deficiencies of the Pasadena Plan.

Mr. Marcheschi replied that this community reacts negatively to a mandatory concept.

Mr. Herbert Lester, Pasadena: As a parent and professional social worker, he said he was very disturbed with what he was hearing tonight, and as a parent he is interested in good education for his children and part of that is learning how to grow up in an inter-racial society.

Julius Johnson, Pasadena: Said this was his first appearance before the Board since 1969, and was confused about what was being presented since Mr. Marcheschi had indicated that a resolution was being presented to the attorneys.

Mr. Marcheschi again explained that at this meeting he would like to propose that the Board pass a resolution instructing the attorneys to present this plan to Judge Real for his approval.

Mr. Johnson then asked if discussion and debate had any influence.

Mr. Newton said that as a member of the Committee who had made up the plan, he found he had pretty much made his decisions prior to coming here.

Mr. Johnson said he was not afraid of this modification plan because he believed no court would approve it.

Mrs. Carmen Romo, Parent: Said she had 8 children in the Pasadena schools K-3, 4-6, and believed parents should have a right to vote on this modification for they are more involved because of their children, than the Board.

Motion—Resolution to Present Modification Plan.

Mr. Marcheschi said he would like to move at this time that the Board instruct the law firm of Paul, Hastings, Janofsky and Walker to seek amendment of the present court order under which the school district is operating and request approval of the court to implement the modifications outlined in the presentation entitled "The Integrated Zone/Educational Alternatives Plan—A Proposed Modification to the "Pasadena Plan".

The Motion was seconded by Mr. Newton.

Mr. Cole again requested that a special meeting be held to consider the questions raised but which have not been answered.

Dr. Myers replied that the plan is not a sudden come-up tonight but the Board members were studying this during their campaign election and had discussed it with each other and many ideas were submitted. He said he would admit that there are problems with every plan, and it was believed to be best at this point since the Pasadena Plan had to be modified. He concluded by stating that he was prepared to vote on it.

Mr. Marcheschi said he had been working on this for the past six months and he and Mr. Newton have attempted to devise a plan that would optimize the best advise of the attorney and other legal authorities and he would not accept the premise that the judge would not accept it. It was his feeling that the

plan was the best compromise and a great step forward, and which indeed might make it possible to stabilize the school district.

Mr. Sheats said he did not know what kind of legal advise Mr. Marcheschi had been getting, and assured Mr. Marcheschi that he would be pointing that out to the judge along with other matters. He again noted that the Pasadena Plan was Board policy and any action taken tonight would be contrary to Board policy since all policy matters require two readings, and the earliest would be January 8, and believed the motion to be out of order.

Mr. Newton commended Mr. Marcheschi for his presentation of the plan and the objective manner in which the subject of voluntary versus mandatory bussing of school children was discussed. That while he respected input from the community, it was a matter the courts would have to decide, and he would therefore, like to call for a vote.

Mr. Marcheschi commended the audience and all the participants in this discussion in light of the gravity of the subject, and expressed his thanks to Mr. Sheats. He believed the debate, discussion, and conduct were on the most high plane and he was thankful and grateful.

Appearance Before the Board.

Mr. Al Romo: Referred to the Treaty of Guadalupe Hidalgo, passed in 1849, which requires involvement of the Spanish speaking persons when decisions of this nature are made and suggested checking into it.

Action—Resolution to Present Modification Plan

By a vote of 4-1, with Mr. Sheats voting "Nay" for reasons stated during the discussion, the above MOTION was approved and made the action of the Board.

Dr. Vetterli made a statement with respect to Mr. Marcheschi, in which he mentioned that tonight was an important mile-

stone in Mr. Marcheschi's life; he was sure Mr. Marcheschi had been working for such a modification sincerely, and he has appreciated his stamina in going through with this presentation, his dedication to what he believed in, and the proposed plan which offered freedom of choice. He added that he has known Mr. Marcheschi as a personal friend, and as a man, and whatever he has attempted to do has been for the good of all children of this district, regardless of their race, and knows there is not a racist thought that enters his mind.

Appearance Before the Board.

Mr. Robert Parker, N. Glen Slope: He said he would like to express from the floor that he was one of the 26,000 who had voted for the present Board and wanted to offer his thanks and added "let us now get on with it".

Adjournment.

The meeting adjourned at 12:20 a.m., Wednesday, December 19, 1973.

/s/ RAMON C. CORTINES,
Ramon C. Cortines,
Superintendent of Schools,
Secretary to the Board of Education.

MR. HENRY MARCHESCHI,
President of the Board of Education.

V:b

PLAINTIFFS' EXHIBIT XX.

Minutes of the Regular Meeting — Page No.
July 10, 1973 — 18,164

BOARD REPORT 1.

Organizational Changes and Acting Appointments.

Dr. Myers stated that since the time the new Board was elected four months ago, they have been very diligently studying the Pasadena schools, and they now feel they know more about it, although there is a great deal more for them to know. He said that during this time they have talked with people in the system—students, teachers, administrators, parents. At the outset they want to say that they recognize there are many, many fine things in the Pasadena schools and in no way are they implying that the majority of things are bad, but they have been repeatedly getting the same complaints which indicated to them some organizational changes were required, and most importantly, to get people to work with the Superintendent in streamlining functions and communications at the Education Center. He reported that they have found three people. They recognize that these are not necessarily people chosen by the Superintendent or the best people for the job, but after some soul searching, they believe these are the best people to do the job. They are being recommended to serve on an acting basis and their positions are in no way cast in concrete. The Board in no way expects the Superintendent to be responsible for the selection and they accept that responsibility, but expect the Superintendent to get these people to work and work hard. He added that these persons have promised to do their best, and they have been told that they must work with the Superintendent for he is their boss.

The Superintendent stated that he wanted it clearly understood that these were not his recommendations to the Board.

He recalled when he was appointed almost a year ago he was asked to reorganize and deal with some of the district's problems. With the help of Dr. Zeronian and the staff, the hope of increasing the ending balance by $500,000 has more than been achieved, in that the balance is now $1.8 million over that budgeted. With the help of the people in the schools, discipline has been greatly improved, and referred to a letter from the Pasadena Police Department relative to this improvement. He had personally met with all employee organizations through the Certificated Employees Council, the Classified Meet and Confer, and the administrators organization. He added that he has visited schools and attempted to develop better programs of communication, and new educational programs have been implemented. There are some strengths and some weaknesses, and the positions of area directors have not been a popular kind of task. He referred to the Board Bylaws and Policies which states that the Superintendent is the Chief Administrator. Mr. Cortines said he has attempted to listen, to take action, provide direction, and work with the various people in the school community. He commented that he has made some mistakes and he has publicly stated that these would be corrected and they have been corrected. If there was a problem, the Superintendent should have been made aware of it and directed to bring back a plan. This was not done. He suggested that if this is the way this Board is to continue functioning, then the problem is not in the staff, but in the leadership, and the Board should indeed take appropriate action to deal with the Superintendent. He added that he has worked with these three individuals and knows them well and if this is the Board's decision, together they will do the job that needs to be done.

Mr. Sheats said he had grave concerns regarding this recommendation which is an extensive reorganization and what distresses him is that no one had talked to him about it. He asked how this recommendation came about and was this done consistent with the Brown Act. Until following the Executive Session, his Report 1 was a blank report. He referred to the

practice of long standing of the Chief Executive Officer making recommendations with supporting data and there is no data regarding these people, what were their strengths and weaknesses, their experiences, and what are their jobs. He recalled that the existing organization includes four educational directors, and asked if they were to be replaced. He raised the question of the cost of these appointees to the district, and concluded that the manner in which this recommendation was conducted was the very essence of the "spoil system", that it was illegal, not having been consistent with the Brown Act and that it should be stricken from the agenda.

Mr. Marcheschi said with respect to the legality of the Board Report, he had requested that it be placed on the agenda and believed that it fully meets the requirements of the law because any Board member can request an item be placed on the agenda. However, he wanted to speak to the merits of this particular Board Report. He added that he was deeply concerned that this is not a wise course of action, although he respects the desire of the new Board members to affect certain changes that they believe are necessary. He said he would vote against this recommendation primarily because he believed that the Board must affect its policies and changes through its chief executive officer and should it not be happy with that arrangement then it should seek a new executive officer.

Appearances Before the Board.

Mrs. Barbara Spangler, Pasadena: Asked with the appointment of these new positions, what happens to the area directors, what are their salaries, and would their salary be commensurate with their responsibility, would there be an overlap of responsibility, and requested meeting in executive session with the Board before the decision is made.

Saul Glickman, President, AFT: Asked if the audience could get prior experience and qualifications of the people being considered.

Mr. Marcheschi stated that these appointees were discussed in Executive Session but not in public session, because the policy specifically states that personnel matters are conducted in executive session, and he encouraged anyone that has anything to present to the Board to do so whether or not they be favorable, since these are acting appointments and the Board would be able to take into consideration any input citizens make.

Rev. Richard Isaacson, Pasadena: Asked when would Mr. Marcheschi be asking for Mr. Cortines' resignation. Mr. Marcheschi replied that it should be made eminently clear that he voted for the promotion of Mr. Cortines to the Superintendency, and he had absolutely no intent but to back the Superintendent at this point in time.

Rod Parker, President-Elect of the Pasadena Education Association: Asked if the District policy and procedure had been followed by informing the staff that these positions were open, and following a negative answer from Mr. Marcheschi, added that he would like to inform the Board that the CTA and the PEA will take every action that the Board does follow its policy.

The Superintendent again reiterated that these were not his recommendations, but he had to be objective, and according to County Counsel the Board has the same right as the Superintendent and can make acting appointments directly to the Superintendent without going through procedure.

Mr. Marcheschi then read the recommendations on Board Report 1, as follows, and called for the vote.

It is recommended that the following appointments be approved, effective July 11, 1973:

Willard A. Craft—Acting Assistant Superintendent for Elementary and Secondary Education

John F. McHale—Acting Assistant Superintendent for Personnel and Support Service

Mrs. Anna Mary Hession—Acting Director of Elementary Curriculum

Motion and Action
Board Report 1

On Motion of Dr. Myers, seconded by Mr. Newton, and by a vote of 3-2 with Mr. Marcheschi and Mr. Sheats voting "Nay", Board Report 1 was approved and made the action of the Board.

Request for Authorization from County Counsel to Retain Outside Counsel: Appointment of Outside Counsel on Interim Basis; Ad Hoc Committee to Assist in Appointment; Preliminary Petition to Be Submitted to Federal District Court for Modification of Pasadena Plan.

President Marcheschi stated that the Board was now going to discuss in his opinion one of the most crucial, most emotional, highly diversified item of school board activity that has ever occurred in this district, adding that he would like to establish some basic understandings. He said that it was no mystery to anyone that the present status of the law on this question is at best "fuzzy", and that members of the Board are proposing to raise questions to the federal courts—not in an attempt to return to segregated schools—but in an attempt to modify the present plan in such a way as to get rid of some of the counter-productive qualities of the Pasadena Plan. They wanted to make it clear that this was not an attempt to do away with the Pasadena Plan which promotes integration, but to modify it in such a manner that, perhaps, most can agree that some beneficial progress was being made. He asked that a modified plan be prepared and presented to the Board no later than August 28 of this year and that the Board then decide whether it will present it to the federal courts. He added that whether or not such a modification will be allowed is not in the hands of this Board, the audience, but in the hands of the courts and he felt the Board should at least make an attempt to see what happens and once and for all settle this question.

Mr. Marcheschi noted that the answer would not come in a short period of time of one or two months, and certainly no changes would be made this year. He concluded by stating that this was just an attempt to see if any modifications can be made and in that spirit he would like to introduce this item for discussion.

UNITED STATES' EXHIBIT 2.

MINUTES OF THE REGULAR MEETING

PASADENA CITY BOARD OF EDUCATION

PASADENA UNIFIED SCHOOL DISTRICT

TUESDAY, FEBRUARY 27, 1973.

Meeting	Page No.
No. 47	18,057

The Pasadena City Board of Education, acting as the Governing Board of the Pasadena Unified School District, met in Regular Session on Tuesday, February 27, 1973, at its regular place of meeting, 351 South Hudson Avenue, Pasadena, California.

The meeting was called to order at 5:10 p.m.

The following members were present:

Mrs. LuVerne LaMotte, President

Mrs. Ann T. Hight, Vice President

Mr. Albert C. Lowe

Mr. Henry Marcheschi

Mr. Samuel C. Sheats

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County Counsel Letter

Mrs. LaMotte read a letter from County Counsel, regarding two possible means for modifying the Pasadena Plan and the procedural steps that can be taken. A copy of the opinion is attached.

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COUNTY OF LOS ANGELES
Office of the County Counsel
648 Hall of Administration
Los Angeles, California 90012
625-3611

February 21, 1973

Mrs. LuVerne LaMotte
1959 Midlothian
Altadena, California 91001

Re: Procedural Steps For Modifying The Pasadena Plan

Dear Mrs. LaMotte:

There are two possible means for modifying the Pasadena Plan—by Board action or by private action.

The Pasadena School Board should decide how it wishes to modify the present Plan. The Court will not make the decision for the Board on what plan is to be adopted, but will only rule on whether a plan approved by the Board meets the requirements for racial balancing in the District.

The wording of the Board resolution to modify the current plan is quite important. It should not appear either to be an attempt to avoid busing for racial balance or to revert either to neighborhood schools per se or the circumstances as they existed prior to the implementation of the present Plan. What is needed on the positive side is evidence of change in circumstances and an indication that the modified plan will have some long-range applicability. The patience of courts with the annual bringing of actions to modify current plans is likely to run out very soon, and the disproportionate time being spent on achieving racial balance or attacking the means of racial balancing weakens any argument for modification now.

The evidence needed for a hearing to have a reasonable chance of success should include statistics on the racial composi-

tion of school attendance areas both under the present Plan and under the proposed modification, the feasibility or lack of it of alternative systems for balancing such as redrawing District boundaries, and some indication of public opinion analogy to the Public Opinion Survey carried out in Inglewood. Regarding this last point, public opinion alone will not affect the Court's decision, however, it is useful as an indication of the concern of the District administration in the possible effectiveness of any proposed modification.

Once a resolution is adopted by the Board then a petition for a hearing may be made to the Federal District Court. Based on analogous proceedings in State courts, it would be perhaps two months before the hearing could take place. An appeal from an adverse decision in the hearing could be taken.

If the School Board declines to act, there is the possibility of a private action under Federal Rules of Civil Procedure Section 24(a). It is not likely to be successful as the court in the *Alexander* action, 427 F. 2d 1352, indicated that the *Board* should be able to seek review in case of changed circumstances, future developments in thte law or experience indicating unworkability.

It is not too late yet to expect that any modification suggested by the Board could be considered and implemented after favorable court action in time for the opening of the 1973-74 school year in September. This is dependent, however, on no appeal having to be taken.

What statistics I do have from Pasadena do not appear to present a favorable case for modification especially as it appears that the racial composition of the District is now stabilizing.

Very truly yours,

JOHN D. MAHARG,
County Counsel.

By /s/ SANFORD K. SMITH,
Deputy County Counsel.

League of Women Voters
Of the Pasadena Area
1321 North Lake Avenue, Pasadena, California 91104

January 18, 1973

Board of Education
351 S. Hudson
Pasadena, CA

Dear Members of the Board of Education:

At the December 12th Board Meeting, Mr. Marcheschi questioned the League of Women Voters' conclusion based on our criteria. We subsequently received a letter from him concerning this matter. We enclose a copy of Mr. Marcheschi's letter so that you may understand this reply.

We do not dispute that there was an accelerated decrease in the caucasian enrollment during the first year of the Pasadena Plan, and a substantial continuation of the decrease in the second year, but we do disagree with his conclusions.

In this letter we would like to clarify our previous statements. We do believe, on the basis of study, that this fluctuation in the *enrollment trend* has now largely subsided and that the current *rate of decrease* of caucasian students is not much different now, than would have been expected without the Pasadena Plan. In terms of the *total* caucasion enrollment, the figures at the present time are approximately what they would have been next year, had there been no Plan. (see graphs)

We base our conclusions on the graph of school district enrollment figures, our 1968 High School Study, and the 1970 Census. In order to obtain a clear and realistic picture of the school district we chose a graph which is based on the *proportions* of ethnic enrollment relating to the *entire student population*, which Mr. Marcheschi does not do. We are enclosing several graphs for your consideration in determining the facts of the matter, as well as our 1968 High School Study and the KIDS 1968 report.

In 1968 during our High School Study, we found white flight in the Muir High School District, including the elementary schools. This flight could have been due to Board policy, housing patterns, school deterioration, segregated schools, etc. We made a statement to the Board of Education warning them of this trend and presented each member with our study. At the same time, the School Bond Committee "KIDS" published a sheet predicting that if the district continued to lose caucasians and gain minorities at the same rate, the enrollment would be 50% minorities by 1971. This became fact between 1971-72.

Our original statement (Dec. 12, 1972) suggested that white flight was no longer the serious problem—rather that families are not moving into the district because of several possible factors including the poor image of the Pasadena area as a residential community. A start for improving this image is rewriting the Title Insurance Home Transfer Corporation profile in order to encourage home-buyers to move into Pasadena. Our aid in writing a revised profile has been accepted and work is now in progress.

The League continues to support integrated schools at all levels and therefore we are concerned about major changes in the Pasadena Plan. As you will remember, between 1960 and 1970 our increasingly segregated district only seemed to perpetuate white flight. Segregated schools *did not* stabilize our community. We believe it would be advantageous to the children and the community to give desegregation a sincere trial period without major changes. With the court rulings, the trend to equalize educational opportunities and increasing acceptance of minorities, we further believe it is possible that the Pasadena School District can have a successful totally desegregated school system without a stable community.

We are not wedded to the present plan and we would be quite willing to accept an alternative plan if *all* the children were assured of a well integrated atmosphere. Senator Alan Cranston's recent letter to us states: "The Constitution requires equal pro-

tection for all under the law. I'm sure nobody who believes in the American way of life wants to change that fundamental principle of our republic. The courts have ruled that segregated schools are inherently unequal, and hence unconstitutional, because they deny children equal education opportunities. I'm sure nobody who believes in the American way of life wants court orders to be defied; if we obey only those court orders that we choose to obey, our system of order and justice under law will break down."

He continues, "I have always considered busing to be the most undesirable method of achieving school desegregation. I have always opposed massive busing of children over long distances at the jeopardy of their education and their health, or where the educational opportunities would be substantially inferior." However, he does accept busing as a last resort for integrating schools. In our district, what other major alternatives exist besides those already proved ineffective or vetoed by the Board and citizens! (Ex.—Educational complex and Open District)

Our city is small and busing is not a serious problem to the health of our young people. In fact, many have come to love the ride and look forward to the big yellow bus. The constant strain of unrest is far worse to their well being than a bus ride.

It is time to look to the positive and good aspects of our integrated school district and to try to continue improvement of the educational programs and the district image. This will encourage caucasian growth and stability, and it will be in the best interests of our children.

Sincerely,

LEAGUE OF WOMEN VOTERS
OF THE PASADENA AREA
/s/ MARGUORITE ERNSTONE,
Marguorite Ernstone,
President.
/s/ ELLEN WILTS,
Ellen Wilts,
Education Chairman.

UNITED STATES' EXHIBIT 3
(page 2)

Table 1. Student Assignment on the Basis of Living within ¾ Mile of a K-6 School Site.

School	C#	C%	N#	N%	SS#	SS%	O#	O%	Total	Permanent Capacity	Relocatable Capacity
Allendale	224	72.5	6	1.9	60	19.4	19	6.2	309	410	150
Altadena	396	49.6	299	37.5	76	9.5	27	3.4	798	840	—
Audubon	53	12.1	358	81.7	12	2.7	15	3.4	438	490	150
Burbank	312	84.8	13	3.5	35	9.5	8	2.2	368	520	120
Cleveland	21	3.4	565	91.9	26	4.2	3	0.5	615	610	—
Don Benito	271	96.1	2	0.7	4	1.4	5	1.8	282	780	—
Edison	112	18.6	439	72.8	37	6.1	15	2.5	603	380	300
Field	185	88.1	3	1.4	17	8.1	5	2.4	210	700	—
Franklin	79	12.1	512	78.2	48	7.3	16	2.4	655	490	180
Hale	243	76.7	7	2.2	48	15.1	19	6.0	317	550	210
Hamilton	348	66.2	9	1.7	119	22.6	50	9.5	526	610	60
Jackson	23	3.3	603	86.6	40	5.8	30	4.3	696	610	210
Jefferson	351	50.4	71	10.2	224	32.2	50	7.2	696	550	570
Lincoln	49	5.1	760	79.2	146	15.2	5	0.5	960	1050	—
Linda Vista	101	89.4	2	1.8	5	4.4	5	4.4	113	260	150
Loma Alta	219	38.1	318	55.4	24	4.2	13	2.3	574	580	30
Longfellow	468	51.6	225	24.8	152	16.8	62	6.8	907	900	90
Madison	184	23.9	342	44.4	225	29.2	19	2.5	770	640	210
Noyes	185	83.7	19	8.6	6	2.7	11	5.0	221	350	120
San Rafael	207	87.7	4	1.7	13	5.5	12	5.1	236	460	—
Sierra Madre	291	86.1	2	0.6	32	9.5	13	3.8	338	670	90
Sierra Mesa	252	92.0	2	0.7	13	4.7	7	2.6	274	520	30
Washington	49	6.0	682	83.3	69	8.4	19	2.3	819	900	—
Webster	459	87.8	17	3.2	22	4.2	25	4.8	523	730	150
Willard	277	73.1	3	0.8	86	22.7	13	3.4	379	900	120
Outside of ¾-mile radius for any school	374	62.3	54	9.0	139	23.2	33	5.5	600		

UNITED STATES' EXHIBIT 4.

Minutes of the Regular Meeting
June 20, 1972—No. 68

Page No.
17,883

Motion and Action.

Mrs. LaMotte Moved that the Superintendent's recommendation to reject the request to de-annex .265 square mile from the Pasadena Unified School District to the Temple City Unified School District be approved. The motion was seconded by Mr. Sheats and by a vote of 4-1 was approved and made the action of the Board. (Mr. Marcheschi voted "Nay" because he felt the parents should have the right to freedom of choice.)

UNITED STATES' EXHIBIT 5.

Minutes of the Regular Meeting
Pasadena City Board of Education
Pasadena Unified School District
Tuesday, November 23, 1971

Meeting
No. 23

Page No.
17,695

The Pasadena City Board of Education, acting as the Governing Board of the Pasadena Unified School District, met in Regular Session on Tuesday, November 23, 1971, at McKinley Junior High School, 325 South Oak Knoll Avenue, Pasadena, California.

The President called the meeting to order at 7:45 p.m.

The following members were present: Mr. Albert C. Lowe, President; Mrs. LuVerne LaMotte, Vice President; Mrs. Ann T. Hight; Mr. Henry Marcheschi; Mr. Samuel C. Sheats.

The following administrative officers were present: Dr. Ralph W. Hornbeck, Superintendent of Schools; Secretary to the Board of Education; Dr. Joseph P. Zeronian, Administrative Assistant to the Superintendent; Miss Grace M. McFarland, Assistant Superintendent for Elementary Education; Mr. Ramon C. Cortines, Assistant Superintendent for Secondary Education; Mr. A. C. Zemba, Business Manager; Mr. Charles L. Palmer, Administrative Director for Personnel; Mrs. Dorothy F. Fagan, Public Information and Publication Specialist.

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Mr. Marcheschi's "New Pasadena Plan"

Mr. Lowe announced that time was now being allocated for the Board to discuss the proposed plan by Mr. Marcheschi. Mrs. Hight posed questions regarding the plan to Mr. Marcheschi, and a dialogue followed. Mrs. LaMotte said she was

always ready to consider new plans, but felt this proposed plan was a giant step backwards in terms of desegregation, and enormously disruptive. She suggested that at least two or three years be allowed to give the present plan a chance. She questioned the legality of the new plan and suggested that a legal analysis be made of it.

Mr. Sheats stated that he had spoken extensively at two previous meetings (November 9 and 16) and again urged the Board to reject the proposed plan. Mr. Lowe read a statement regarding his evaluation of the proposed plan, a copy of which is attached to the permanent minutes of the Board. Mr. Marcheschi then responded.

* * * * *

Presentation to the Pasadena Board of Education
by Albert Lowe
November 23, 1971

I appreciate the clear and forthright manner in which the proposal by Mr. Marcheschi and the response by Mr. Sheats were presented to the Board and community. I have attempted to objectively evaluate Mr. Marcheschi's proposal.

Goals

What are the goals against which an evaluation must be assessed?

I agree with several of the goals listed by Mr. Marcheschi (hereinafter referred to as Mr. M) in his first presentation on October 26, 1971, namely (in summary form):

1. The elimination of discrimination and purposeful acts resulting in forced segregation. (I would modify it to read "forced or encouraged segregation".)
2. Building inter-racial harmony and brotherhood through our schools.

3. Providing quality education to all children with special priority emphasis on raising the achievement level of low socio-economic children.

To the extent the above goals can be achieved through voluntary action, it is good. Failing that, however, a School Board still has a legal and moral responsibility to act. Very little in this country is achieved without some infringement on individual freedom (Mr. M's 4th goal). In America individual freedom and personal liberty have always been subject to the law. The law tells us when we must send our children to school, for how long, determines much of their curriculum, sets standards for their teachers, sets their graduation requirements, etc. We cannot violate the law in those and many other matters, regardless of our personal preference. Similarly, the law has also always had a hand in the determination of school attendance zones.

Characteristics of Mr. Marcheschi's Plan.

I understand the essential characteristics of Mr. M's plan to be:

1. Kindergarten to 3rd grade Primary and 4th-6th grade Elementary schools are changed to all kindergarten to 6th grade schools.
2. Neighborhood schools prevail in majority white areas.
3. Students of all racial groups who live in predominantly black residential areas are assigned and bused to white-area schools in such a way as to achieve racial balance among the "white" schools.
   However, black students may elect to attend virtually all-black schools in predominantly black residential areas. If 1 to 4 such schools were so designated, some black students would likely be bused to their all-black schools.
4. Audubon, Cleveland, Edison, Franklin, Jackson, Lincoln, Madison and Washington would be closed as integrated schools. Some would open as all-black schools. Washington Junior High and ultimately probably Muir would become all black.

5. A black sub-school board would be elected by blacks to operate the "black" schools, but would still be under jurisdiction of the PUSD Board.
6. Mexican-Americans could similarly have "their" elementary school the second year.
7. The basic principles of Mr. M's proposal seem to be:
   A. Let's integrate but the minorities and others who reside in "their" areas must bear the burden because the Caucasians won't put up with present plan, where they share the burden.
   B. Give the blacks who want it, "separate but equal" schools—run by blacks.
   C. Similarly give the Mexican-American their own elementary school.

Evaluation of Mr. M's Plan.

My analysis shows the following pluses and minuses of Mr. M's plan:

Pluses

1. Greater percent of Caucasians in some schools would likely be helpful to those schools.
2. When Caucasians aren't bused into minority areas, there may be less white exodus from predominantly white areas.
3. Will eliminate some of the feelings of racism by some blacks because those who complain could attend black schools run by blacks.
4. Provides a measure of self-determination by blacks and Mexican-Americans, two groups who historically have not had same.

Minuses

1. All burden of desegregation is placed on westside students and particularly on blacks. This is not fair.

2. All non-black students living west of Los Robles (approximately) would be bused all the time instead of just half their elementary years. Likewise for black students who opt for integrated schools. Unlike the present Pasadena Plan which keeps neighborhood children together, the new proposal encourages the breakup of many neighborhoods.
3. Probable tendency for wealthier blacks to opt for integrated schools leaving the low socio-economic blacks isolated.
4. Planned racial separation through a dual system—would be an official apartheid. This perpetuates detrimental effects of isolation, and prepares students for future racial conflicts.
5. Wouldn't we be short-changing black and Mexican-American students by teaching them in isolation thus failing to prepare for adulthood in a multi-racial society?
6. Lessens staff and community effort to learn to work with and understand minorities.
7. Setting aside eight elementary, one junior high and one senior high for black schools teaching "black pride", etc. will tend to drive out Caucasians and other non-blacks who live in those areas. They would *never* have a neighborhood school.
8. Eliminates the specialization advantages of K-3 and 4-6 schools.
9. Some schools (such as Allendale, Arroyo-Garfield, McKinley, and San Rafael) don't have sufficient site nor classroom capacity; schools with the largest sites (Don Benito, Field, Sierra Madre, Sierra Mesa) would have to become very large schools—probably 900 to 1,000 enrollment. McKinley, Eliot, and Wilson Junior High Schools would all be over-capacity.
10. Presuming we maintain approximately present proportions of black staff in integrated schools and provide all blacks to staff black schools there would be a surplus of white teachers. How do we absorb or discharge this surplus?

Observations

It appears to me that the minuses of Mr. M's plan far outweigh the pluses. I wonder if even the parents living in white neighborhoods would opt for the changes when they realize they are simply shifting the total burden and responsibilities onto the shoulders of westside students. I would think their consciences would bother them.

What purports to be a neighborhood plan is not quite so. About ⅓ of the students would never attend a neighborhood elementary school. On the other hand, under the Pasadena Plan nearly all students attend a neighborhood school ½ of their elementary years and they stay with their neighborhood schoolmates for the other half.

The stated freedom of choice provisions are also a bit misleading. For the non-blacks who have the option between nearby black "specialty" schools and cross-town integrated schools—is there REALLY a choice? And one might say the same for blacks who wish to become a part of the mainstream of American life.

Stabilizing Anglo Enrollment

I agree with Mr. M's desire to stop the decrease in Anglo-Caucasian enrollment in the school district. I do believe, however, that any whites who are "saved" by his plan would be offset by those we would "lose" because they would have to bear all the budens of our task. And we can ill afford to lose the latter group who are generally comfortable in an integrated setting.

Furthermore, let's put the exodus in the proper perspective. Of the 4,011 Caucasian enrollment drop over the past two years 2,897 were in the graduating classes. Some of the balance left for reasons other than our schools. While I recognize the loss of present students is a problem, I believe our major thrust should be toward attracting Caucasians to the district, particularly those who truly believe in an integrated society.

The problem is not the Pasadena Plan itself, but rather the conflict which has been promoted over it. Such a public controversy disturbs the foundations of the community, creates negativity and uncertainty, and causes many whites to reject the whole disturbance.

If there is any effort which can reverse the tendency of whites to flee from minorities (with or without busing) it will include:

1. Desirable programs and educational quality not readily found elsewhere.
2. An attitude that capitalizes on the benefits we can obtain from multi-racial schools as we work to eliminate the problems.
3. Replacing those who leave with people who want to make integration succeed.

I do not believe Mr. M's proposal is superior to the present plan in regard to long range ethnic stability.

Separate Minority Schools

If there is merit to considering separate minority schools I question the viability and legality of Mr. M's approach. His plan creates an apartheid, dual school system not unlike some that have been dismantled by the courts. His plan is backwards in that it discourages integration, and encourages segregation. The proper approach would be one which encourages integration with no burden placed on those opting for separation.

I would not be adverse to considering a single separate black school perhaps covering kindergarten through 8th grade on a pilot basis provided sufficient parental support was shown.

The Present Pasadena Plan

There is no perfect plan. But I do see more strengths, accomplishments and promise in the present plan than in any other ideas thus far submitted. Some of them are:

1. Kindergarten-3rd grade Primary and 4-6 grade Elementary schools have educational and behavioral strengths.
2. More people are working to solve difficult educational problems.
3. More district-wide concern and cohesiveness.
4. More constructive and innovative efforts are taking place.
5. More program offerings at our secondary schools than ever before—and more than any of our surrounding districts.
6. It's fair—the entire community is involved in our tasks.
7. Neighborhood youngsters are kept together.
8. It's educationally sound and provides potential for excellence in every school.
9. Unity and understanding is growing.
10. It's legal.

Some hopeful signs should be noted:

1. Arroyo-Garfield Primary School—now in its third year of integration—showed an increase of Anglo-Caucasian students this year.
2. Washington Elementary School had a reduction of only 7 white students this year—and the 4th grade have more whites than did last year's. Most of their white students come from across town and apparently most are staying.
3. Blair High School lost only 17 white students last year. Muir lost 95, its smallest drop in years (excluding the year of redistricting). But Pasadena High School drawing almost all of its white students from its own "neighborhood" lost 481. Question: Is it the attitude rather than the proximity that brings white flight?

Our task? To analyze these and other similar successes to see what they've done that we can replicate. We may therein find THE major keys to success.

Conclusion

In conclusion, I wish to express my sincere appreciation for the time, effort, and concern evident in Mr. Marcheschi's proposal. At this point it does not appear to me to have sufficient advantages to warrant adoption. Indeed, it appears that such a plan with its discriminatory elements and apartheid provisions would be illegal. Perhaps a legal opinion from County Counsel to clarify that point would be in order.

Mr. Marcheschi's proposal is like a package tied with the pretty ribbons of alleged volunteerism, freedom, and self-determination which upon closer examination proves to be essentially false glitter with ominous content. It does, however, remind us of the concerns by some citizens over the present plan.

In the weeks ahead I shall endeavor to find new means of minimizing the happiness and satisfaction of all the students and parents in this school district. Perhaps there are other ways we can provide alternatives for those who are dissatisfied with the present Pasadena Educational Plan.

Meanwhile, I think it is time to stress a positive approach on the whole matter. Let's tell the world that Pasadena believes that integration with all its tasks is a giant PLUS—and that Pasadena is building academic strength, unity and understanding with an attitude of one-for-all and all-for-one. Come and join us!

Albert C. Lowe

UNITED STATES' EXHIBIT 7.

MINUTES OF THE REGULAR MEETING
PASADENA CITY BOARD OF EDUCATION
PASADENA UNIFIED SCHOOL DISTRICT
Tuesday, January 9, 1973

Meeting No. 40 — Page No. 18,023

The Pasadena City Board of Education, acting as the Governing Board of the Pasadena Unified School District, met in Regular Session on Tuesday, January 9, 1973, at its regular place of meeting, 351 South Hudson Avenue, Pasadena, California.

The meeting was called to order at 5:04 p.m.

The following members were present: Mrs. LuVerne LaMotte, President; Mrs. Ann T. Hight, Vice President; Mr. Albert C. Lowe; Mr. Henry Marcheschi; Mr. Samuel C. Sheats.

* * * * *

Mr. Marcheschi made a presentation of his new plan entitled, "Neighborhood School/Integration Zone Plan for Grades K-6", a copy of which is attached. A discussion followed the presentation and Mrs. Hight requested that the staff study this plan. Mrs. LaMotte suggested a "One-Quarter Mile Radius Plan". The Board instructed the staff to review and evaluate Mr. Marcheschi's new plan, the "Minimum Plan", and Mrs. LaMotte's "One-Quarter Mile Radius Plan", in order to modify the court approved Pasadena Plan.

* * * * *

UNITED STATES' EXHIBIT 8.

SOME NEW AND UNIQUE PROGRAMS OFFERED BY THE PASADENA UNIFIED SCHOOL DISTRICT.

Pasadena public schools provide a learning environment in which students may grow and develop at their own pace and acquire the skills which they will need to be a productive and contributing member of the society in which they live whether it be in the school community, the family unit or the world of work.

Among the skills are the ability to communicate effectively, to reason concretely and abstractly and to develop a method of inquiry which will lead to solutions of problems.

Additionally, they are exposed to the concept that each person has an intrinsic worth and that the development of the individual's potential will lead to self fulfillment and improvement of the society in which he lives.

The following are examples of the programs which put Pasadena schools in the forefront in public education:

Primary Schools—Kindergarten, Grades 1-3.

Discovery Rooms—Offers Learning Centers in math, science, art, literature

Grayce Ransom MultiMedia—Develop reading ability of boys and girls. Learning Centers in each classroom

Nongraded-Multiaged Discovery—Resource—Children make choices of language—arts—math—crafts—typewriting—business machines—etc.

Project Aim—Achieving improvement in mathematics. Building concepts—improve problem solving ability and skill building

Reading Program—Reduced Class Size—Movement Education—Small groups for reading instruction. Movement Educa-

tion relates physical development skills to reading carry-over

Compensatory Education—13 schools—$430 extra behind each student for development of basic skills

Special reading teachers

Resource teachers

Elementary Schools—Grades 4-6.

Flexible Modular Scheduling—Three schools in one departmentalization. 50-minute modules with regrouping each hour in subject areas

Minicourses—two-week classes in unusual subjects

Modular Scheduling Program—Teacher specialists in subject areas. Extensive elective program offered

Team Teaching—Learning stations in math, reading and social science

Tutorial program

Team presentations in each curriculum area

Saturday Science Workshop at Caltech—Prepare students for a science career

Ungraded programs

Hoffman Reading Program

Instrumental Music Instruction

Junior High Schools—Grades 7-8.

Directed Tutoring in Reading—High school tutors work with junior high students on 1-1 basis

Thinking and Communications—Elective for grade 8 students

Manual Communications Skills—Emphasizes communications with deaf. Students learn to communicate through sign language and finger spelling

English-Reading—Library usage and linguistics

Minicourses—Classes typically offered for a two-week period—Portuguese, Greek, Beethoven, California Classical Tour of Italy, Cinematography

Whereack Program—Students go into the community to study "where the action is". Programs teach students about the community and its resources through trips to governmental agencies, professional, cultural and business operations.

Gifted Program—Saturday classes—Grades 5-12

The "Vistas" program will offer classes in the arts, sciences and cultural activities

A minimum of 200 minutes of special instruction per week at the primary and elementary levels

Advanced classes in mathematics, English, General and Social Science, World History, U. S. History are offered at our secondary schools

Advanced placement classes

Senior High Schools—Grades 9-12.

Batik Tie and Dye—Principles of Design

Experimentation with batik tie and dye and other resist methods

Cartooning—Basic instruction in figure and still life drawing, leading to caricature

Independent Study—Art

Composition and Critical Thinking—11th and 12th grade students who have completed 10th grade English. Language as a tool of thought and communication. Frequent practice in written expression

Man's Search for Values—Humanities—literature, music and art, major works of English and continental literature

Language and Literature of Films—Upgrade the critical attitudes of students so that they may select and evaluate films which will favorably influence personal behavior and ideals

Bell and Howell Electronics—To help career planning in electronics. Electronics class for students with detailed lesson plans

Pre Calculus I—II—III—Accelerated program beginning in grade 9 terminating with 1½ years of calculus to prepare students for Advanced Placement examination

Mathematics Achievement Program—Raise achievement level of high school students in mathematics
Funded under Title III ESEA $100 M

Musical Comedy Workshop—To introduce students to correlating acting, directing, costuming, singing and choreography

Student and Law Enforcement—Strengthen relationship between law enforcement, the school and the community at large; to acquaint students with criminal law, how it affects people and the role of police in our society

Introduction to Construction—Pasadena Unified School District and San Gabriel Valley Building Industry Association
Designed to teach construction from practical experience of remodeling and building a real house in the community

Introduction to Television—Operation of camera—audio—lighting—videotape recorder—etc.
To give a student a working knowledge of television technicians job

Law Enforcement Training—Identify and indoctrinate future law enforcement personnel

Nursery School Aide Program—Provide a multiethnic laboratory for young high school women students to be involved in preschool education of young children

Paramedical Operations (Nursing Aide)—To increase student's knowledge and provide experience in the basic principles of health maintenance

Printing and Offset Lithography—Introduction to lithographic printing. Practical experience in basic photography and graphic arts photography

Restaurant Occupation—Cooking and serving laboratory providing principles of food preparation and work experience with restaurants

Television Studio Technician—Train students for employment in TV studios

Expanded School Program—Members of community teach high school students at sites away from classroom at times other than regular school hours. Examples—Desert exploration—Environmental structures and human organization—Music and Dance improvisation—Ballet for modern dancers—Economic workshops

Inner School—Alternative plan for meeting district and state requirements—a three-period block of time, students have options in English, social science and physical education and other selected subjects. Students use community as a school.

Learning and Counseling Center—Assistance to students in development of attitudes, study habits, basic skills and personal responsibility.

Minicourse Program—Approximately 400 elementary students are assisted by high school students and by the tutoring and teacher aide program. For example—drama, French, German, Spanish, guitar, music and math.

Pasadena College "Professional Experience Practicum"—For ninth grade students—teacher trainees are assigned to a "cooperating teacher" and a resource person to assure competency in the teaching of reading in a given subject area.

Evening High School Program—Provides educational alternatives to regular day high schools.

Foreign Languages—Six foreign languages offered through fourth year of instruction—Latin, German, Russian, Chinese, Spanish, French.

Computer Program—Program gives "hands on" experience.

Accelerated Classes—Classes qualifying college-bound students for advanced placement in college.

For further information, please call Education Center, 795-6981, ext. 252.

UNITED STATES' EXHIBIT 11.

November 1, 1972

ENROLLMENTS AND ETHNIC DISTRIBUTION:

For the past 24 years, Anglo-Caucasian enrollment has been declining in Pasadena Schools. Now, for the first time, the number of Anglo-Caucasian students has fallen below 50%.

* * * * *

The final figures on End of First School Month Enrollments and Racial and Ethnic Distribution of students in the Pasadena Unified School District have been compiled by the District's Data Processing Department. The following points are of interest:

Enrollments.

The District had estimated that total end of first school month enrollments would be 26,144 students—a reduction of 1403 students from the previous year. The actual end of first school month enrollment figure for this year is 26,225—a reduction of 1322 students. (Preliminary figures had indicated a 1200-student reduction; however, these figures were obtained by a telephone survey conducted by the Department of Planning, Research and Development at the end of the first school month.)

In terms of grade levels, the estimated enrollments and the actual enrollments were:

	Estimated Enrollments	Actual Enrollment	Difference
Grades K-6	13,497	13,464	−33
Grades 7-8	3,953	4,038	+85
Grades 9-12	8,694	8,723	+29

Thus, it can be seen that the anticipated enrollment decline is continuing in Pasadena as elsewhere within the State of California and in the nation. For example, when five comparable

urban school districts were polled, the figures indicated that all were experiencing student enrollment losses ranging from 1.6% to 5.3% (from 208 fewer students in Santa Monica to 1952 fewer students in San Bernardino).

* * * * *

Racial and Ethnic Distribution.

The report covering the racial and ethnic distribution of the student population of the Pasadena Unified School District shows the continuing downward trend in Anglo Caucasian enrollment. This phenomenon has been occurring for 24 years and is shown in the accompanying figure. As of October 6, 1972, the Anglo Caucasian enrollment comprised 46.8 percent of the student population of the Pasadena Unified School District.

* * * * *

UNITED STATES' EXHIBIT 13.

PASADENA UNIFIED SCHOOL DISTRICT
Education Center
351 South Hudson Avenue
Pasadena, California 91109

January 23, 1973

From: Ramon C. Cortines

Subject: Evaluation of Plans for Assignment of Kindergarten Through Sixth Grade Students to Schools in the Pasadena Unified School District.

The goal of public education within the Pasadena Unified School District is to provide the best education possible for *all* students within the limits of available finances. In this regard, the Board of Education is trying specifically to

- Determine the best system of assigning students so that strong educational benefits are provided.
- Determine the best educational system that will provide an integrated environment which stimulates and encourages the multi-cultural diversity present within our community.
- Determine the best educational system that will provide a positive attraction for Anglo-Caucasian families to settle within the boundaries of the Pasadena Unified School District.

In trying to achieve these sub-goals, a number of plans have been advanced for the assignment of students to schools in the Pasadena Unified School District. As Superintendent, I have been instructed by the Board of Education to prepare a staff evaluation of four plans:

1. The on-going "Pasadena Plan" (Appendix A).
2. A plan proposed by Board Member Mrs. LuVerne LaMotte, called the "One-Quarter-Mile-Radius Plan" (Appendix B).
3. A plan proposed by Board Member Mr. Henry Marcheschi, called the "Neighborhood School/Integrated Zone Plan for Grades K-6" (Appendix C).

4. A plan that would satisfy the minimum requirements of Judge Real's Federal Court Order, called the "New Minimum Plan" (Appendix D).

Of these four plans, No. 3 and No. 4 call for returning to all K-6 schools. The other two assume retention of K-3 and 4-6 schools. Because of the particularly great impact of this matter on the entire community and, particularly, to school children and school personnel, I am requesting your organization to contribute its valued and thoughtful input into this evaluation.

A rating sheet listing the criteria on which these four plans are to be rated is attached. Please rate each proposed plan on a scale of from *0* to *10* on the basis of your agency's considered opinion:

0	1	2	3	4	5	6	7	8	9	10
Poor					Moderate					High

Space is provided on the rating sheet below each criteria for your comments. Should your organization desire to explain its rationale for a particular numerical rating, this will be the appropriate place to do so. Please attach additional sheets if more space is needed. However, brevity is encouraged.

When your organization has rated each plan on each criteria, please sign the evaluation form and return it to the office of the Superintendent for analysis.

It will be most helpful if completed forms are returned by February 5, 1973. However, careful consideration is more important than haste. If you are unable to meet the February 5 date, aim for February 12, and, in any case, responses will be accepted no later than February 26, 1973.

Thank you for your assistance in this most important matter.

Sincerely yours,

RAMON C. CORTINES,
Superintendent of Schools.

RCC:hn
Enclosure

Appendix A.

THE ONGOING "PASADENA PLAN".

* * * * *

Since the most important component of the Pasadena Plan was the improvement of the instructional program, all schools have developed a great variety of educational offerings. New approaches to reading and mathematics, a broad selection of electives at the junior and senior high schools, an expanded program for gifted students, expanded career and vocational education courses, and advanced placement classes are but a few samples.

Appendix C.

NEIGHBORHOOD SCHOOL/INTEGRATED ZONE PLAN FOR GRADES K-6.

General.

This Plan is based on the K through 6 system that the District had prior to the court order. In addition, the Plan closely parallels the first step used in developing the current "Pasadena Plan"—namely, a grouping of K-6 schools into four ethnically balanced zones. From that point on, the Plan is new.

The steps required to implement this plan are:

1. All 25 District primary (K-3) and elementary 4-6) schools will be redesignated as K-6 schools.
2. The 25 schools will be grouped into four zones on the basis of ethnic considerations. Thus, the ethnic balance of each zone will approximate that of the District as a whole.

   Note should be taken of the fact that the zones are so constructed that the pairings necessitated by the present "Pasadena Plan" (for example, Don Benito for Grades K-3, then to Washington Elementary School for Grades 4-6) would be abandoned. Thus, students who live near Don Benito could choose this school for all of their K-6 education while students who live near Washington Elementary School could do likewise.
3. Each student can attend any school within his zone.
4. Financial incentives in the form of people, resources, programs, transportation, etc., would be provided to achieve *voluntary* racial balance at *each* school with a zone.

The resulting system would seek to balance ethnic concentrations of students at any given K-6 school site on a voluntary basis using incentives of many forms.

PASADENA UNIFIED SCHOOL DISTRICT.

Department of Planning, Research and Development
351 South Hudson Avenue
Pasadena, California 91109

March 9, 1973

The Superintendent wishes to express his appreciation for your efforts in evaluating the four plans for student assignment in the Pasadena Unified School District. A summary of the results of the evaluation is enclosed. As you can see, the Pasadena Plan was the clear choice of the majority of evaluators except on a few questions.

The results of the survey were reported to the Board of Education on Tuesday, February 27, 1973, and appeared in the Star-News on Friday, March 2, 1973.

Sincerely,

/s/ PETER F. HAGEN,
Peter F. Hagen,
Administrative Director for Planning, Research and Development.

PASADENA UNIFIED SCHOOL DISTRICT.

Department of Planning, Research and Development.

Memorandum.

January 29, 1973

To Mr. Ray Cortines

From Peter F. Hagen

Subject Distribution of Memorandum and Questionnaire to Evaluate Four Plans for Student Assignment to Schools

The memorandum and questionnaire for evaluating the four plans for student assignment in the Pasadena Unified School District were mailed to the following agencies on Friday, January 26:

Mrs. Carl Sidle
Sierra Madre Task Force

Dr. James King
Black Task Force

Captain John Marshall
Communications Committee

Mr. Joe Wilson
Mexican American Task Group

Mr. Saul Glickman
American Federation of Teachers

Mr. Harold Sarnecki
Pasadena Education Association

Mrs. Effie Green
Classified Employees Meet-and-Confer Committee

Mr. Don Hill
Association of Pasadena School Administrators

In addition, complete packets of these materials were mailed to each board member on Monday, January 29.

P. F. H.

UNITED STATES' EXHIBIT 14.

Minutes of Committee to Modify Pasa. Plan 1973.

* * * * *

Minutes of Planning Session No. 2

Committee to Modify Pasadena Plan

September 13, 1973

7:30 a.m.—9:30 a.m.

Board Room, Education Center

Committee Members Present:

Louise Coover, Ramon C. Cortines, Willard Craft, Dorothy Fagan, Linda Gough, Peter Hagen, John Haines, Henry Marcheschi, Ed Maya, Dorothy Nelson, Lyman Newton, Joe Zaronian.

* * * * *

Minutes—Planning Session No. 2.

September 13, 1973.

Page 2.

* * * * *

Because Mr. Newton had to leave early, Mr. Marcheschi outlined for his benefit and for the benefit of the rest of the committee members, the following five concepts which he feels are important in any reorganization plan:

1. Provide parents with a freedom to send their children to the school of their choice.

UNITED STATES' EXHIBIT 15.

INNOVATIVE AND CHALLENGING PROGRAM OFFERED BY THE PASADENA PUBLIC SCHOOLS.

Preschool Through 12th Grade

Board of Education

Mrs. LuVerne LaMotte, President
Mrs. Ann T. Hight, Vice President
Albert C. Lowe, Member
Henry Marcheschi, Member
Samuel C. Sheats, Member
Ramon C. Cortines, Secretary and Superintendent of Schools

Administration

Ramon C. Cortines, Superintendent of Schools
Grace M. McFarland, Associate Superintendent for Schools and Educational Services
Dr. Joseph Zeronian, Associate Superintendent for Operations and Personnel
Mrs. Hubert Siegel, Design and Layout
John E. Doran, Photograph

- Is your knowledge of Pasadena Public Schools up to date? Do you know that Pasadena Unified School District offers students more opportunities for learning in more subject areas than most school districts?
- Are you aware of the outstanding community resources available in Pasadena to supplement the Pasadena Unified School District's Educational program? Think of the advantages of working with jet propulsion laboratory, Caltech, Pasadena City College, Pasadena College, Pacific Oaks, Fuller Theological Seminary—to name a few.

- Do you know that 68% of our high school graduates continue with their education? Do you know that Pasadena Unified School District's 1972 graduates were accepted at leading colleges and universities throughout the United States including such institutions as California Institute of Technology, Stanford, Princeton, Harvard, Swarthmore, Dartmouth, Massachusetts Institute of Technology, Pomona and the Universities of California?
- Take just a minute to glance through this publication. It will tell you about some of the innovative and challenging programs the Pasadena Public Schools offer to the children and youth of Pasadena, Altadena, Sierra Madre and portions of the unincorporated Los Angeles County area.

Pasadena, California, March, 1973.

Specializing in Early Childhood Education.

Pasadena's 14 primary schools specialize in the education of children ages five to nine in kindergarten through third grade. Emphasis is on the basic skills of reading and mathematics.

Each student is tested at the beiginning of each school year to find out what skills in reading and mathematics he has already learned and on what skills the teacher should start working with him. This method is called the diagnostic and prescriptive approach and is used throughout his primary-elementary years.

A profile is kept for each student and each skill learned is carefully noted and becomes the basis for building a new learning opportunity for him.

Allendale Primary School

- recognized as having an outstanding reading program and candidate for a model state program
- proud of its Junior First Program: a combination of a mature kindergarten and a first grade class, two teachers

using activity learning stations and a special reading program

- using 31 Blair High School students as individual tutors three days per week
- orients new parents with home-school visits by the staff

Audubon Primary School

- pioneering two ungraded classes of first, second and third graders in an open structure program
- offering a morning kindergarten program organized around three centers: mathematics-science-construction, music and movement
- piloting "Asian Americans in our Community" for third graders, a program funded by the Rosenberg Foundation to guide children in dealing with problems of prejudice and stereotyping
- involving students, parents and staff in "New Awareness Program" in which improvement of a student's image of himself accompanies a similar improvement in achievement
- organized along a self-contained classroom approach, one teacher and an aide working with the same group of children. Opportunities are provided for children to succeed as persons as well as learners of skills
- emphasizing the skill areas of reading, language and mathematics
- providing opportunities for individual and group problem solving, and giving each child at least one opportunity to participate in a stage production
- promoting creative expression and original thinking through class meetings

Don Benito Primary School

- using Glasser's "Schools Without Failure" approach to learning
- known as the "Friendship School" because of the warm relationships students have developed for one another
- the setting for a Los Angeles County television series, "I Can Read"
- using learning centers to individualize instruction

Franklin Primary School

- the first to offer an instrumental music program to second and third graders
- experiencing significant gains in reading and mathematics through Achievement in Mathematics (AIM), Title I (compensatory education) and Harper-Row tutorial reading program
- giving children an opportunity to appreciate the cultural side of learning through special classes in music and art

Hamilton Primary School

- an outstanding example of individualization of reading instruction through tutorial services
- cooperating with Pasadena High School in "Reading Techniques," a class benefiting Hamilton students and would-be teachers
- teaching English to 54 non-English speaking students representing eight different languages
- helping children to improve their reading skills through Simple Steps Upward Program

Jefferson Primary School

- organized along three broad types of teaching styles: traditional-one teacher classrooms, modular scheduling and multigraded approaches
- offering movement education, reading and mathematics specialists and English as a second language classes
- working with UCLA as a training laboratory for prospective teachers
- one of the 15 in the League of Cooperating Schools

Linda Vista Primary School.

- one of the new (1972) "core" schools (a core building is one which has its classrooms built around a central resource learning center
- using learning centers in each classroom to give all students learning experiences over and above regular classroom instruction
- the first to have new playground equipment designed and built by parents using discarded tires and power poles described in October issue of *Sunset Magazine*
- a fine example of its motto, "Happiness is Linda Vista"

Noyes Primary School.

- finding its Pupil Tutorial Reading Program is successful in the first, second and third grades where it began
- planning to extend its Pupil Tutorial Reading Program to kindergarten immediately
- involving almost 50 parents in an ongoing school workshop devoted to creation of instructional materials
- has three specialists assisting teachers in development of arts and crafts, kindergarten and first grade readiness activities and counseling services

San Rafael Primary School.

- using the latest child development theories of learning (Piaget's) as a basis for instruction
- successfully involving all students in Project AIM (Achieving Improvement in Mathematics) with the aid of seven additional adults
- the setting for a special education class for deaf children

Sierra Madre Primary School.

- offers 90 minutes of reading instruction daily to every student
- works with Pacific Oaks in providing an enriched Discovery Room program
- rehabilitated last year at a cost of $627,000 using 1967 bond funds
- individualizes physical education skills through the movement education program

Sierra Mesa Primary School.

- uses tutors from a Pasadena High School class in reading
- offers students conversational French four days a week taught by a volunteer teacher
- provides learning stations in most classrooms in reading—and some in mathematics
- has a student council composed of two representatives from each class who meet weekly to work toward making their school better
- offers an open structure program as an alternative for the teaching of reading, mathematics and language arts
- uses the multi-modal, multi-media reading system in basal reading, language experience and liguistics

- has an outstanding movement education program relating development of motor skills to improvement in reading
- offers a special federally funded (ESA Title I) program of instruction in reading and mathematics for underachieving children

Willard Primary School.

- teaches specific basic skills through a learning center approach
- provides Grayce Ransom learning skills in all classes
- uses special project funds for reading and mathematics resources centers
- bases classroom organization on Glasser's "Schools Without Failure" philosophy
- has a firmly established movement education program
- offers a wide selection of minicourses

Expanding Instructional Horizons.

Pasadena's 11 elementary schools build on the fundamental skills children learn in the primary schools. Reading and mathematics are still stressed. Science, social studies, music and art are an important part of the child's learning experience. Instrumental music instruction is offered beginning in the fourth grade.

Altadena Elementary School.

- offers a massive minicourse selection from girls learning to change a tire to fourth-year French lessons
- provides a student adviser program to give guidance to all students and parents

- uses Glasser's "School Without Failure" philosophy for learning opportunities
- uses flexible modular scheduling in organizing the teaching-learning process. Each subject is offered in a 50-minute block of time module taught by specialists in the field

Cleveland Elementary School.

- first to offer Junior Great Books Program
- home of the Young Artists who perform for fellow students, television and the Pomona Fair
- cooperates with Occidental College in a language arts and a poetry project for students
- offers a sunrise-and-noon library time with services of an instructional aide available

Edison Elementary School.

- established the first mathematics laboratory staffed by a full-time teacher for all classes
- offers a structured tutorial reading program based on the successful Soto Street School pattern

Hale Elementary School.

- adopted the Grayce Ransom Reading Program as its basal system of instruction in reading
- opened a new library this year which also functions as a learning and resource center
- organized around teaching teams at every grade level
- uses Victory Park as an outdoor classroom for movement education and science classes

Field Elementary School.

- capitalizes on teacher strengths by offering a modular scheduling program with students going for instruction to experts in their field
- provides tutorial services based on the Soto Street School program using students within the school with great success
- offers an Opportunity Room Program serving 90 students in individual or small groups assisted by a teacher and an instructional aide

Jackson Elementary School.

- proud of its open structure classrooms, staffed by parent aides which group fourth, fifth and sixth graders according to achievement rather than grade level
- assigns a teacher and instructional aide to guide children in science and art projects in the Discovery Room
- participates with Occidental College in the Research and Teacher Evaluation (RATE) project which provides a full-time reading teacher and Occidental student teachers to work with children in reading and language arts
- offers special programs developed by resource people from the community including American Field Service foreign students, parents and Occidental College professors

Lincoln Elementary School.

- offers a cross-grade plan of reading instruction daily for 90 minutes for all students
- involves in a daily reading program: three specialist teachers, 12 classroom teachers, an English-as-a-second-

language teacher, two full-time aides, eight part-time student aides from Occidental College, a teaching assistant from University of Southern California, five students from Cal State, Los Angeles
- continues the flexible use of the Discovery Room learning centers (established during the RATE project with Occidental College) for cross-grade reading instruction, multigraded open structure program for Mentally Gifted Minors (MGM) and the ongoing enrichment program for all classes

Loma Alta Elementary School.

- formally opened a tastefully furnished 5000-volume library which started in a custodial storage closet two years ago
- offers team teaching in mathematics, reading and social science using learning stations adapted from Grayce Ransom program and a tutorial program from Soto Street School
- offers a cross-graded (4-5-6) reading and mathematics program using the diagnostic-prescriptive approach to learning under the direction of two teachers, a student teacher and several SERVE volunteers

Madison Elementary School.

- converted a large former kindergarten area into an Independent
- instructs from the tutorial services provided by Blair High School students three days a week
- offers minicourses taught by Blair students in art, music, public speaking, and the dance
- has a bilingual program with a bicultural approach for Spanish-speaking children taught by a qualified teacher and an instructional aide

Longfellow Elementary School.

- organized for self-contained classroom instruction, team teaching and some departmentalization at every grade level
- offers a twice weekly program for reading and mathematics instruction, "After School Fun Time," in which students prepare food using printed recipes and ingredients donated by well-known food companies
- benefits from the tutorial services provided by Pasadena College students in reading and fine arts

Washington Elementary School.

- introduced two new approaches to the teaching of reading and mathematics: Grayce Ransom Reading Program and Fresno Mathematics Program
- offers students a totally individualized computer program for drill and practice in mathematics
- has amassed a 15,000-volume library for student use

Challenging Individual Interests.

Pasadena's four junior high schools continue instruction in the basic skills to introduce more specialized subjects to provide for the student's greater range of interest. Individual talents are nurtured and specialized classes in mathematics, language, science and foreign language are offered.

Eliot Junior High School.

- individualizes instruction in a series of small classes (10 students) held in the Learning Center daily
- sponsors ERAC, an amateur radio club, for science and electronic students

- offers "Student and the Law," a two-week minicourse which provides instruction in the judicial system, law enforcement and correction systems using the community agencies as a classroom
- has the only California Cadet Corps program at the junior high school level

McKinley Junior High School.

- has 20 student teachers from Cal State Los Angeles working with individual students five hours a week
- provides a computer class for its eighth grade students at Blair High School
- offers 11 group counseling sessions on a weekly basis
- sponsors the "Whereac" Program in cooperation with Cal State Los Angeles. Students go into the community to explore its resources, employment and career opportunities

Washington Junior High School.

- involves all faculty members and students in an intensive reading program using the Vail Phonics series and Hoffman Reading machines
- offers a concentrated English program focusing on spelling and using parents and SERVE volunteers as tutors
- has 20 students participating in a Saturday science workshop at Caltech
- offers a 12-hour minicourse in the use of the slide rule for students, parents and faculty
- pioneered the successful "AB-938" Mathematics Improvement Program

Wilson Junior High School.

- individualizes learning using Pasadena City College students as paid instructional aides
- provides student tutorial services to Willard benefiting both junior high and primary youngsters
- center for junior high school educationally handicapped children
- individualizes mathematics instruction through smaller classes and teacher-designed materials

Preparing for College and the World of Work

Pasadena's high schools provide college-bound students with a meaningful sequence of academic subjects and a wide variety of elective courses to appeal to individual interest and ability.

Approximately 63 percent of the graduating seniors chose to further their education.

Preparation for the "world of work" is also a high priority. Work experience and career guidance classes are a significant part of the 430 different courses offered at the high school level.

Blair High School

- offers a comprehensive program of academic and vocational studies, on arts and athletics
- developed an "Inner School" program based on teacher-student contracts which allow students to plan their own courses with teacher guidance
- provides tutoring for individual students from Allendale, Jefferson and Madison as fulfillment of field work required for course in applied behavior in science
- offers paramedical occupations class in cooperation with Huntington Memorial Hospital

- offers a nursery school aide program in cooperation with the federally funded nursery school program. Four-year olds attend school on the Blair campus and provide the setting for involving young women in the education of young children
- offers instruction in electronics in cooperation with Bell and Howell
- reports 1972 graduates attending Dartmouth, Massachusetts Institute of Technology, Stanford, University of California, Smith and Barnard

Muir High School

- offers 15 unique program alternatives for instruction and learning
- had six 1972 graduates accepted at Caltech
- emphasizes career oriented programs in business, homemaking and industrial arts. Students achieve job placement level upon completion.
- staffs a reading center with two teachers to provide full-credit courses in reading, a minicourse in study skills, individualized help and cross-age tutorial services
- offers a federally funded Mathematics Achievement Program in a laboratory setting based on the learning theories of Swiss psychologist Jean Piaget
- improves reading proficiency of ninth grade students using the tutorial service of teacher trainees from Pasadena College
- reports 1972 graduates attending Stanford, Swathmore, University of California, Princeton, Pomona and the Universities of California

Pasadena High School

- largest school district facility and saff permitting flexibility and diversity —illegible—
- known for its outstanding Marching Band and Girls' Drill Team
- has 160 students in its tutorial program providing individualized instruction to students in Field, Hamilton, Sierra Mesa, Hale, Washington Junior High School and the Pasadena High School learning center
- offers students "on-the-job" training as nursery school aides in six licensed day nurseries
- published the results of the collaboration of three Pasadena High School students in an independent study project, "The World is Your Classroom
- has a Black Studies resource center directed by a full-time teacher assisted by an aide
- with Blair and Muir offers "hands-on" computer instruction
- reports 1972 graduates attending University of California, Harvard, —illegible— Radcliffe, Occidental, Stanford and Pomona College

Additional Programs at All Schools

All high schools offer a series of three precalculus courses to prepare student for advanced placement examination, and

- a Saturday construction program in cooperation with San Gabriel —illegible— Building Industry Association
- classes in television programing and production
- four years of six foreign languages (French, Spanish, German, Latin, Russian and Chinese)
- independent study programs and advanced placement clases

- class in printing, offset and lithography
- outstanding opportunities in science
- Twenty Pasadena students viewed the last Apollo space launching at Cape Kennedy in December

Special Schools Meet Special Needs

Alternative School

Established in the Spring of 1972 as a planning school, the Alternative School seeks to provide students, ages 4-17, with the best educational experience possible based on a combination of the basic skills and other subject areas which they and their parents choose.

The University of Massachusetts provides consultant services and both graduate and undergraduate interns to assist the teaching staff. The 100 students who attend the school were selected from more than 1200 applicants.

The Alternative School encourages "learning to learn" activities and problem-solving approaches which prepare the student to continue his education in the traditional or regular school program.

Children's Centers

Children's Centers provide supervision and instruction for children of parents who work or are in training. They are primarily from one-parent families. Usually the sole parent is the mother. Children from two years of age through the elementary school years are eligible.

There are five nurseries for the prekindergarten child who attends all day. The school age child is accommodated in six centers where he has supervision and instruction before and after school and all day during school vacation periods.

Diversionary School

The Diversionary School is operated in cooperation with the Human Relations Division of the Pasadena City Manager's Office. This school provides educational experiences for pupils expelled from public schools as a rehabilitation service.

Evening High School

The Evening High School Program is designed to provide educational alternatives to the regular day high schools and the continuation high school. It is housed at Blair.

Attendance is voluntary and school is in session evenings, Monday through Thursday. Classes are coeducational and ungraded. Many students are engaged in independent study. Achievement and mastery is stressed more than the amount of time spent in the classroom.

Foothill High School

Foothill High School receives students from the regular high schools who can not function in those settings successfully because of social or behavioral problems.

A broad general education including practical arts is offered based on a modular scheduling plan of operation. Each student chooses the modules of instruction best related to his needs and capabilities after an intensive counseling session with his parents.

Inner School Program

The Inner School is an alternative plan for meeting school district and state requirements. It functions for a three-period block of time and students have options in English, social science, physical education or selected electives.

Students can meet requirements for three out of six classes in the Inner School. Learning opportunities are provided both in

school and in the community. Students meet in groups, take tours, tutor one another and use the community as a school.

Intermediate Opportunity School Program

The Intermediate Opportunity School Program serves those junior high school students who have serious learning or behavior problems. Boys attend classes in the morning, girls in the afternoon. In addition to instruction in the basic skills, the practical skills of homemaking and shop are offered.

Preschool

Preschool classes are offered for approximately 255 three- and four-year-old youngsters at nine locations. The program is designed to provide enriching experiences, field trips, parent activities, hot lunch and instruction for those children needing further experience before entering kindergarten or are billingual or who have other special needs. Two classes are located in high schoools (Blair and Muir) and give training to young people interested in working with young children.

Roosevelt School for the Handicapped

Students who are not eligible for enrollment in any other school program because of serious physical or mental handicaps may attend Roosevelt School for the Handicapped.

Roosevelt enrolls students from 3 to 21 years of age. The goal is to help them develop their basic potential to its maximum in the physical care of their persons, communication with others, and the development of improved muscle control.

Educational Directors

Four educational directors have been named by the Board of Education. They are responsible for the administration of a

group of schools, kindergarten through senior high school. Their responsibilities include the development of curriculum and budget, expenditures of funds, employment and assignment of personnel and communication with their total community, students, parents and teachers.

The educational directors are:

Area I
Eugene Lambert

Schools
Pasadena High
Washington Junior High
Longfellow
Washington Elementary
Hale
Franklin
Burbank
Hamilton
Don Benito

Area II
Edward Shutman

Schools
Muir High
Eliot Junior High
Altadena
Loma Alta
Madison
Edison
Sierra Madre
Noyes
Audubon
Jefferson
Sierra Mesa

Area III
Donald Hill

Schools
Blair High
McKinley Junior High
Wilson Junior High
Jackson
Cleveland
Lincoln
Field
Allendale
Linda Vista
Willard
Webster
San Rafael

Area IV
Dr. Frank Welch

Schools
Alternative School Programs
Roosevelt
Intermediate Opportunities
Evening High School Program
Foothill High
Diversionary
Special Education
Psychological Services

This brochure describes only a few of the programs offered to students in the Pasadena Unified School District.

If you would like more information about the programs described in this newspaper, we invite you to visit the information Office, 351 South Hudson Avenue, Pasadena 91109, or telephone 795-6981 ext. 252.

The public is invited to visit the schools at any time. Special Mini tours may be arranged by calling the information Office.

UNITED STATES' EXHIBIT 16.

MINUTES OF THE REGULAR MEETING

PASADENA CITY BOARD OF EDUCATION

PASADENA UNIFIED SCHOOL DISTRICT

TUESDAY, OCTOBER 26, 1971

Meeting	Page No.
No. 19	17,677

The Pasadena City Board of Education, acting as the Governing Board of the Pasadena Unified School District, met in Regular Session on Tuesday, October 26, 1971, at its regular place of meeting, 351 South Hudson Avenue, Pasadena, California.

The meeting was called to order at 2:10 p.m.

The following members were present: Mrs. Albert C. Lowe, President; Mrs. LuVerne LaMotte, Vice President; Mrs. Ann T. Hight; Mr. Henry Marcheschi; Mr. Samuel C. Sheats.

The following administrative officers were present: Dr. Ralph W. Hornbeck, Superintendent of Schools; Secretary to the Board of Education; Dr. Joseph P. Zeronian, Administrative Assistant to the Superintendent; Miss Grace M. McFarland, Assistant Superintendent for Elementary Education; Mr. Ramon C. Cortines, Assistant Superintendent for Secondary Education; Mr. A. C. Zemba, Business Manager; Mr. Charles L. Palmer, Administrative Director for Personnel; Mrs. Dorothy F. Fagan, Public Information and Publication Specialist.

* * * * *

Alternatives to Pasadena Plan.

Mr. Marcheschi read Part I—The Urgent Need for Change—of his "The New Pasadena Plan", a copy of which is attached. He will present Part II at the November 9 meeting of the Board.

PASADENA UNIFIED SCHOOL DISTRICT

Office of the Superintendent of Schools

Memorandum

October 26, 1971

To Members of the Board of Education

From Ralph W. Hombeck

Subject End-of-First-School-Month Enrollment Report

1. Comparison of Enrollments for 1970-71 and 1971-72. (Total Numbers)

You will note that the final report is almost identical to the preliminary report, derived from telephone count and reported to the Board October 12. Enrollment at the end of the first school month is 27,547 (an increase of 6 from preliminary report).

This represents a decrease of 1,733 students (— 5.9%) from enrollment at the end of the first school month, 1970.

It is important that these reports be interpreted with common sense and honesty. As I mentioned October 12, it would be fallacious to assume that the loss of students has no relationship whatever to the desegregation of Pasadena's schools. We know that desegregation is contraversial, and that the negative feelings of some people have been so strong that they have moved their students from the Pasadena schools.

However, it is equally fallacious to assume that the entire loss, or even the major portion of the loss, is due to reactions to the desegregation of Pasadena's schools.

To place this in perspective, let's look at the facts:

1. The Pasadena schools have been losing enrollment steadily since 1966. The decrease has accelerated the past two years.
2. School districts in this area, throughout the state, and across the nation are facing decreasing enrollments.

The reasons are complex. A major factor is decreasing birth rates. For example, birth rates for the year that this year's kindergartners were born were down a whopping 17% from the previous year! As a result, the majority of major districts in this state had decreasing enrollments averaging, 3 to 5% (ours was 5.9%). Nine of the 11 districts I polled in the San Gabriel Valley had significant decreases.

An informal survey of 40 school districts throughout the state, on October 15, revealed that 23 or 57.5% experienced a decrease in enrollments. The greatest decrease (60%) occurred at the k-6 level. Reasons cited for decrease included declining birth rate due to "pill"; unemployment; smog and poor housing".

3. There are many reasons people are moving from this area. A study in the Star-News printed this morning enumerates eight major reasons:

   a. Company transfers

   b. Families moving closer to their jobs

   c. People moving up in housing needs (growing families)

   d. People moving down in housing needs (retirement; fewer children at home)

   e. Economic problems, such as loss of job

      "Pasadena in particular has been hurt by cutbacks in aerospace and defense-oriented industries, with Pasadena's unemployment rate now far above the national average."

   f. Smog

   g. People moving closer to members of their family

   h. Schools and busing

An example of quotations from officials of moving firms:

> "People sometimes give the reason that they want to move . . . where there is no crosstown busing, or . . . where there are fewer minority people. However, it is given more times than it is the actual reason."

Also, quoting from the article:

> "Almost without exception, the moving men say that the *economic situation, particularly cutbacks in the aerospace industry, is the real cause of the majority of the moves being made from Pasadena.*" (emphasis added)

What percentage of the decrease is the direct result of the reaction of some people to desegregation? The answer, of course, must be based on speculation. It appears clear from the facts summarized above that it does not represent the majority of the decrease.

II. Racial and Ethnic Distribution by Grade Level.

Of special significance in this report are two figures:

1. Decrease of Anglo-Caucasian enrollment, October 1970 to October 1971, from 53.7% of the total to 50.3% of the total (decrease of 1,799 students, or 3.4% of the total).*
2. One of our elementary schools, Loma Alta, is now above the 50% limit imposed by Federal court ruling (51.9% of the Loma Alta students are Black).

A. To place the former statistic in perspective, let's look at the following facts:

1. Pasadena has shown an increase in minority students and a decrease in Anglo-Caucasan students since 1961.
2. The percentage of decrease of Anglo-Caucasian students was the greatest from October 1969 to October 1970: a loss of 2212 students, or 4.6% of the total.

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* District figures are given as percentages of the total, rather than as percentages of a sub-category, such as "Anglo-Caucasian", for the following reasons:

1. This is the method of reporting required by state and national agencies.
2. This is the method of reporting used by state and national agencies.
3. This is the method of reporting always used by our school district. This is pointed out to avoid misunderstandings by those who prefer to use percentages of a sub-category. For example, if the latter were used, the decrease in the Anglo-Caucasian group itself would be — 11.5%.

3. The number and percentage of students in the decrease from October 1970 to October 1971 was significantly *less* than the previous year (1799 students, 3.4%).
4. The number of increase of Black students from 1969 to 1970 was 391. The number of increase of Black students from 1970 to 1971 was 210.

Conclusion:

There has thus been a *slackening* in the trend (decreasing white enrollment, increasing Black enrollment). This is only the second year since 1965 that this has occurred.

B. In reference to the second statistic reported above (percentage of Black students at Loma Alta Elementary), I recommend that since:

1. This is the only school over the percentage limitation.
2. This school exceeds the limitation by only 1.9%.
3. Boundary changes that necessitate the transfer of students during the school year are not conducive to producing sound educational outcome.

we identify this fact to Judge Manual Real, along with our intent to continue present school boundaries throughout the current year.

RALPH W. HORNBECK.

UNITED STATES' EXHIBIT 17.

MINUTES OF THE SPECIAL MEETING

PASADENA CITY BOARD OF EDUCATION

PASADENA UNIFIED SCHOOL DISTRICT

TUESDAY, APRIL 11, 1972

Meeting No. 48 — Page No. 17,798

The Pasadena City Board of Education, acting as the Governing Board of the Pasadena Unified School District, met in Special Session on Tuesday, April 11, 1972, at its regular place of meeting, 351 South Hudson Avenue, Pasadena, California.

The meeting was called to order at 7:40 p.m.

The following members were present: Mr. Albert C. Lowe, President; Mrs. LuVerne LaMotte, Vice President; Mrs. Ann T. Hight; Mr. Henry Marcheschi; Mr. Samuel C. Sheats.

The following administrative officers were present: Dr. Ralph W. Hornbeck, Superintendent of Schools; Secretary to the Board of Education; Dr. Joseph P. Zeronian, Administrative Assistant to the Superintendent; Miss Grace M. McFarland, Assistant Superintendent for Elementary Education; Mr. Ramon C. Cortines, Assistant Superintendent for Secondary Education (left at 8:00 p.m., returned at 8:45 p.m.); Mr. Charles L. Palmer, Administrative Director for Personnel; Mrs. Dorothy F. Fagan, Public Information and Publication Specialist.

Invocation and Pledge of Allegiance

The invocation was offered by Mr. Henry Marcheschi, followed by the pledge of allegiance led by the President.

Resignation—Superintendent

Mr. Lowe stated that there was an item which the Board would like to discuss first, although it was not on the agenda. He turned the meeting over to Superintendent Hornbeck who read the following statement:

Dear Mr. Lowe and Members of the Board:

As I find myself heading down the "home stretch" of my fourth year as Superintendent of the Pasadena Unified School District, I would like to make a few comments.

I think it would be fair to state that this has been the most eventful four years in the history of our district. We have faced many problems. For most, there is no perfect solution. We have endeavored to analyze the situations carefully, and apply the action most likely to be the *best* answer under the circumstances.

The most controversial action certainly, was the complete desegregation and reorganization of the district. In viewing this step in retrospect, and examining all the *realities* including the decision in Federal Court and the massive problems we were encountering in educating youngsters who were segregated racially and socio-economically, I am convinced that what has become known throughout the nation as the "Pasadena Plan" is the soundest alternative of those available to us in pursuit of our goals of providing the best possible education to all students in this district, the disadvantaged as well as the advantaged. It is not a perfect solution; we have never contended that it was. I am convinced it was and is the best available to us.

Probably even more significant, however, are the new educational programs which have been started during the past four years in an effort to meet head on the "problems of urban education" which plague city school districts throughout this nation. We have begun two entirely new "alternative" schools (Intermediate Opportunity School and Evening High School), and are planning the third. The many other alternatives which have been developed and implemented, across the district or in individual schools, are too numerous to be mentioned here.

This year, we have seen the measurable reduction of both the rate of vandalism and the number of serious behavioral incidents in our schools. Further reduction is needed and, I believe, possible. For three years we have avoided serious problems involving large numbers of students (such as riots or massive walkouts) which continue to plague many other districts.

We have been fortunate in avoiding teacher strikes and walkouts. Though saddled with severe financial constraints, we passed one tax election, which helped immeasurably.

* * * * *

UNITED STATES' EXHIBIT 19.

Pasadena United School District
Office of the Superintendent of Schools

Memorandum April 13, 1972

To Members of the Board of Education

From Ralph W. Hornbeck

Subject Suspensions, Incidents, Absences

On December 28, I sent you a memorandum summarizing the numbers of suspensions in the school district through October 31, 1971. I am pleased to submit the following report for the period through February 29, 1972.

* * * * *

You will be pleased to note the continuing trend of reduced numbers of incidents and absences. These, of course, are district figures.

* * * * *

Level	Number of Suspensions (Students)		
	1970	1971	%
Senior High	1128	1014	—11%
Junior High	1189	901	—24%
Elementary	100	47	—53%
Primary	79	9	—89%
DISTRICT TOTALS	2496	1971	—21%

Comparison of Categories of Offenses

September—February 1970-71 vs. 1971-72

Resulting in Disciplinary Action

*Category	Change (%)
GROUP I	
Secondary	—17.0%
Elementary	—75.6
GROUP II	
Secondary	+11.7
Elementary	—81.8
GROUP III	
Secondary	—34.1
Elementary	—41.7
GROUP IV	
Secondary	—54.0
Elementary	0.0
GROUP V	
Secondary	[Table indicates no
Elementary	incidents either year]
GROUP VI	
Secondary	—12.6
Elementary	—64.6
DISTRICT TOTAL	

* Categories

Group I "Violations Against Persons"—****

Group II "Violations Against Property"—****

Group III "Violations Against Public Decency and Good Morals"—****

Group IV "Violations Against Public Health and Safety"—****

Group V "Violations Against Traffic Regulations"—****

Group VI "Violations Against School Administrative School Procedures"—****

UNITED STATES' EXHIBIT 21.

MEAN NUMBER AND PERCENT BLACK STUDENTS IN 91 CALIFORNIA UNIFIED SCHOOL DISTRICTS WITH DIFFERENT HISTORICAL PATTERNS TOWARD SCHOOL DESEGREGATION (1966-1971)

PAGE 382

		Mean Number						Mean Percentage					
Historical Pattern	N	1966	1967	1968	1969	1970	1971	1966	1967	1968	1969	1970	1971
Always Balanced	12	165	170	187	198	208	203	4	4	4	5	5	5
Stable/High Desegregation	32	257	281	312	335	374	413	1	1	1	1	2	2
Stable/Medium Desegregation	10	1,160	1,076	1,253	1,330	1,359	1,383	4	4	4	5	5	5
Stable/Low Desegregation	8	7,186	7,456	7,845	7,976	8,169	8,255	11	12	12	12	13	13
Large Change Toward Deseg.	15	3,056	3,166	3,333	3,463	3,471	3,546	12	13	13	14	15	16
Small Change Toward Deseg.	9	2,295	2,376	2,345	2,489	2,520	2,498	9	9	9	9	9	10
Small Change Toward Seg.	5	752	883	998	1,221	1,277	1,349	4	5	5	6	7	7

MEAN NUMBER AND PERCENT SPANISH SURNAME STUDENTS IN 91 CALIFORNIA UNIFIED SCHOOL DISTRICTS WITH DIFFERENT HISTORICAL PATTERNS TOWARD SCHOOL DESEGREGATION (1966-1971)

PAGE 383

		Mean Number						Mean Percentage					
Historical Pattern	N	1966	1967	1968	1969	1970	1971	1966	1967	1968	1969	1970	1971
Always Balanced	12	734	793	832	897	926	936	17	18	19	19	20	20
Stable/High Desegregation	32	1,619	1,726	1,844	1,988	2,091	2,157	11	12	12	13	14	14
Stable/Medium Desegregation	10	2,407	2,496	2,554	2,714	2,782	2,722	19	19	19	20	20	20
Stable/Low Desegregation	8	7,168	7,292	7,741	7,965	8,058	8,013	24	24	25	26	26	27
Large Change Toward Deseg.	15	1,958	2,065	2,123	2,243	2,288	2,217	17	18	18	19	19	19
Small Change Toward Deseg.	9	2,692	2,804	2,894	3,012	3,057	3,090	19	19	20	21	22	22
Small Change Toward Seg.	5	3,860	4,117	4,390	4,731	4,987	5,066	20	21	22	24	25	26

MEAN NUMBER AND PERCENT OTHER WHITE STUDENTS IN 91 CALIFORNIA UNIFIED SCHOOL DISTRICTS WITH DIFFERENT HISTORICAL PATTERNS TOWARD SCHOOL DESEGREGATION (1966-1971)

PAGE 384

		Mean Number						Mean Percentage					
Historical Pattern	N	1966	1967	1968	1969	1970	1971	1966	1967	1968	1969	1970	1971
Always Balanced	12	3,589	3,649	3,711	3,708	3,631	3,517	76	74	74	73	71	71
Stable/High Desegregation	32	13,388	13,595	13,681	13,613	13,346	13,002	84	84	83	82	81	79
Stable/Medium Desegregation	10	11,514	11,387	11,644	11,614	11,144	10,843	72	71	72	71	69	69
Stable/Low Desegregation	8	29,977	28,416	29,003	28,789	27,646	26,867	60	59	59	58	56	56
Large Change Toward Deseg.	15	9,229	9,047	9,031	8,940	8,029	7,393	66	64	64	63	60	59
Small Change Toward Deseg.	9	10,958	10,838	10,709	10,500	10,080	9,698	69	68	68	67	65	63
Small Change Toward Seg.	5	11,335	11,240	11,358	11,068	10,658	10,122	72	70	69	66	64	62

MEAN NUMBER AND PERCENT OTHER WHITE STUDENTS IN 91 CALIFORNIA UNIFIED SCHOOL DISTRICTS WITH DIFFERENT HISTORICAL PATTERNS TOWARD SCHOOL DESEGREGATION (1966-1971)

PAGE 385

		Mean Number						Mean Percentage					
Historical Pattern	N	1966	1967	1968	1969	1970	1971	1966	1967	1968	1969	1970	1971
Always Balanced	12	3,589	3,649	3,711	3,708	3,631	3,517	76	74	74	73	71	71
Stable/High Desegregation	32	13,388	13,595	13,681	13,613	13,346	13,002	84	84	83	82	81	79
Stable/Medium Desegregation	10	11,514	11,387	11,644	11,614	11,144	10,843	72	71	72	71	69	69
Stable/Low Desegregation	8	29,977	28,416	29,003	28,789	27,646	26,867	60	59	59	58	56	56
Large Change Toward Deseg.	15	9,229	9,047	9,081	8,940	8,029	7,393	66	64	64	63	60	59
Small Change Toward Deseg.	9	10,958	10,838	10,709	10,500	10,080	9,698	69	68	68	67	65	63
Small Change Toward Seg.	5	11,335	11,240	11,358	11,068	10,658	10,122	72	70	69	66	64	62

TWO WAY ANALYSIS OF VARIANCE ON MEAN PERCENT OTHER WHITE STUDENTS IN 91 CALIFORNIA SCHOOL DISTRICTS WITH DIFFERENT HISTORICAL PATTERNS TOWARD SCHOOL DESEGREGATION (1966-1971)

PAGE 386

Historical Pattern	N	1966	1967	1968	1969	1970	1971	F ratio	Significance
Always Balanced	12	76	74	74	73	71	71	25.47	.001
Stable/High Desegregation	32	84	84	83	82	81	79	44.56	.001
Stable/Medium Desegregation	10	72	71	72	71	69	69	7.34	.001
Stable/Low Desegregation	8	60	59	59	58	56	56	6.16	.001
Large Change Toward Desegregation	15	66	64	64	63	60	59	10.34	.001
Small Change Toward Desegregation	9	69	68	68	67	65	63	19.96	.001
Small Change Toward Segregation	5	72	70	69	66	64	62	19.56	.001
F ratio		5.49	5.89	5.74	5.82	5.87	5.61		
Significance		.001	.001	.001	.001	.001	.001		

The interaction term for this analysis is 1.37 which is not significant.

UNITED STATES' EXHIBIT 23

Table

Comparison of Average Scores of Anglo American Children in Pasadena Elementary Schools in 1973
h Average Scores of Students in Districts with More Than 50% Minority Students and Less Than 50% Minority Students

udent Performance	Over 50% Minority avg.	N	SD	Pasadena avg.	N	SD	Under 50% Minority avg.	N	SD	F Ratio	Sig.
Achievement 3	35.16	469	8.73	38.00	667	8.80	35.41	345	8.06	18.56	.001
Achievement 6	60.83	963	15.99	62.96	633	16.42	61.72	2042	16.93	3.15	NS
Word Know 6	29.43	867	11.08	34.18	731	9.69	28.33	1175	10.20	75.55	.001
Self Esteem	11.66	2064	2.57	11.94	1429	2.43	11.84	4685	2.50	6.25	.01
Reflected Self	11.79	2064	2.95	11.89	1429	2.82	11.94	4685	2.78	2.01	NS
Status Anxiety	7.42	2064	3.39	6.98	1429	3.35	6.74	4685	3.33	29.59	.001
School Anxiety	5.94	2063	3.25	5.36	1429	3.16	5.65	4685	3.25	13.84	.001
Attitude to School	5.09	2062	1.58	5.14	1426	1.54	5.36	4684	1.54	26.35	.001
Choosing Anglos	75.07	2009	41.93	77.02	1427	34.54	76.05	4661	32.63	1.28	NS
Choosing Blacks	70.00	1908	48.08	63.29	1425	37.03	74.73	3167	55.58	26.26	.001
Choosing Mexican	74.71	1166	43.73	71.45	1156	57.62	73.65	2979	53.35	1.20	NS
Choosing Asians	86.31	1509	57.25	95.47	641	74.98	86.20	697	76.26	4.74	.01

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Table

Comparison of Average Scores of Mexican-American Children in Pasadena Elementary Schools in 1973
Average Scores of Students in Districts with More Than 50% Minority Students and Less Than 50% Minority Students

dent Performance	Over 50% Minority avg.	-	SD	Pasadena avg.	-	SD	Under 50% Minority avg.	-	SD	F Ratio	Sig.
Achievement 3	29.73	195	8.31	30.50	109	8.57	31.40	59	8.03	0.99	NS
Achievement 6	44.23	535	16.25	44.96	140	17.08	49.69	303	15.85	11.27	.001
Word Know 6	19.58	298	9.72	23.37	169	9.38				16.81	.001
Self Esteem	11.44	1375	2.47	11.72	328	2.32	11.93	984	2.42	11.76	.001
Reflected Self	11.92	1375	2.92	11.97	328	2.75	12.06	984	2.99	0.66	NS
Status Anxiety	7.92	1375	3.45	7.37	328	3.22	6.74	984	3.20	35.99	.001
School Anxiety	6.97	1375	3.18	6.10	328	3.26	5.95	984	3.08	32.86	.001
Attitude to School	5.14	1374	1.57	5.17	328	1.54	5.48	984	1.52	14.58	.001
Choosing Anglos	71.01	1348	44.23	75.50	325	37.81	76.65	957	41.75	5.27	.01
Choosing Blacks	77.22	1241	55.30	68.93	327	37.21	77.71	485	70.11	3.04	NS
Choosing Mexican	81.75	1337	44.19	84.25	304	50.99	81.50	948	47.20	0.44	NS
Choosing Asians	82.82	764	64.65	98.40	156	72.71	90.11	219	76.40	3.79	NS

Table

Comparison of Average Scores of Black Children in Pasadena Elementary Schools in 1973 ith Average Scores of Students in Districts with More Than 50% Minority Students and Less Than 50% Minority Students

Student Performance	Over 50% Minority avg.	-	SD	Pasadena avg.	-	SD	Under 50% Minority avg.	-	SD	F Ratio	Sig.
Achievement 3	26.92	566	8.17	29.59	618	10.95	28.44	58	8.11	12.58	.001
Achievement 6	42.03	893	16.50	42.66	597	17.60	49.54	142	17.58	12.05	.001
Word Know 6	19.34	962	8.93	21.53	696	9.28	19.28	165	9.49	12.52	.001
Self Esteem	11.58	1725	2.41	11.36	1359	2.37	11.61	615	2.45	3.90	NS
Reflected Self	12.10	1724	2.85	11.91	1359	2.84	11.92	615	3.03	1.94	NS
Status Anxiety	8.47	1724	3.67	7.70	1359	3.40	7.30	615	3.58	31.77	.001
School Anxiety	6.71	1724	3.25	5.95	1359	3.13	6.10	615	3.25	23.23	.001
Attitude to School	5.17	1723	1.65	5.08	1359	1.62	5.28	614	1.63	3.29	NS
Choosing Anglos	73.09	1645	45.38	74.86	1351	40.32	81.86	600	38.87	9.44	.001
Choosing Blacks	90.35	1640	47.03	84.82	1356	37.95	102.92	546	56.55	30.85	.001
Choosing Mexican	81.86	1171	55.27	80.46	1114	60.89	81.00	175	58.99	0.17	NS
Choosing Asians	85.73	1297	57.56	90.64	563	71.54	-	-	-	2.46	NS

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DESCRIPTION OF POPULATION:

1. Sample of Districts over 50% Minority:

a. San Francisco	69.0% minority
b. Oxnard	60.1% minority
** Weighted Average:	66.5% minority

	Anglo	Black	Mex-Am	Other	TOTAL
N	2062	1723	1374	1001	6160
%	33.5	28.0	22.3	16.2	100.

2. Pasadena Unified School District

a. Pasadena	54.4% minority
** Weighted Average:	54.4% minority

	Anglo	Black	Mex-Am	Other	TOTAL
N	1426	1359	328	11	3124
%	45.6	43.5	10.5	0.4	100.

3. Sample of Districts under 50% Minority:

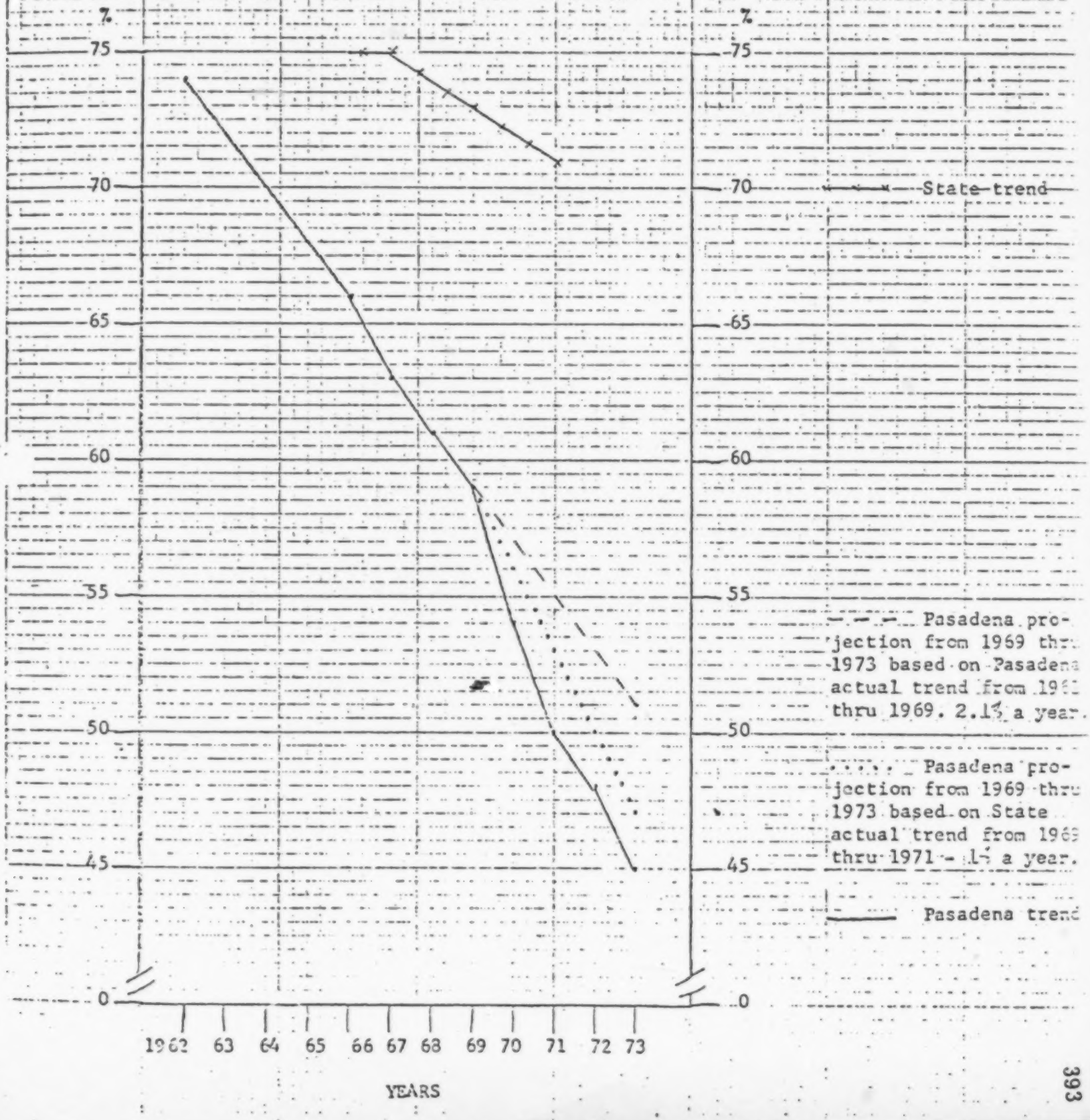
a. Fullerton	14.2% minority
b. Tacoma	20.4% minority
c. Ventura	22.5% minority
d. Monrovia	28.7% minority
e. Santa Barbara	42.6% minority
** Weighted Average:	25.8% minority

	Anglo	Black	Mex-Am	Other	TOTAL
N	4684	614	984	27	6309
%	74.2	9.7	15.6	0.4	100.

Figure 9

Percent "Other White" in Public School Population of Pasadena Unified School District 1962 through 1973 Compared with California Public School Population Estimates After 1969

Percentages are based on data secured from the California State Department of Education Ethnic Surveys



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Number of Statistically Significant Changes Between 1972 and 1973 on Student Measures for the Pasadena Unified School District Reported by Total District and for 25 Elementary Schools by Ethnic Group

	Black						Anglo-American						Mexican-American					
	District			Schools			District			Schools			District			Schools		
	+	-	NC	+	-	NC	+	-	NC	+	-	NC	+	-	NC	+	-	NC
Self Esteem			1	0	0	24			1	1	0	24			1	0	0	11
Reflected Self			1	0	0	24			1	0	1	24			1	0	0	11
Status Anxiety[b]	1			1	0	23			1	1	1	23			1	0	0	11
School Anxiety[b]	1			2	0	22			1	1	0	24			1	0	0	11
Attitude to School			1	1	2	21			1	0	0	25			1	0	1	10
Choosing Black			1	0	1	23			1	1	2	22	1			0	0	11
Choosing Anglo			1	0	2	22	1			3	4	18			1	0	0	11
Choosing Mex.- Am.			1	1	0	23	1			0	2	21			1	0	0	11
Choosing Asian-Am.			1	0	0	15			1	0	0	18			1	0	0	5
Reading Achievement Grade 3			1	0	0	13			1	0	0	13	1			0	0	5
Reading Achievement Grade 6			1	0	0	11			1	0	0	11			1	0	0	6
Total				5	5	231				7	10	223				0	1	92

[a]Change + = Positive Change Beyond .01 level of significance.
- = Negative Change Beyond .01 level of significance.
NC = No Change that could not occur more than 1 time in 100 by chance.

[b]Low scores are positive i.e. low anxiety is preferable.

UNITED STATES' EXHIBIT 26.

PARTICIPATION IN CONTROLLED OPEN ENROLLMENT PROGRAM SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT[a]

1969-1972

School Year	Total Minority Students in District (Black + Sp. Sur.)	Number of Minority Students Participating	Percent Participating
1966-67	12,451	219	1.8
1967-68	12,436	400	3.2
1968-69	12,801	1,490	11.6
1969-70	13,070	2,026	15.5
1970-71	13,104	1,772	13.5
1971-72	13,073	1,554	11.9
1972-73	14,603	1,416	9.7

[a] The information for calculating the total number of minority students in the school district was secured for the Bureau of Intergroup Relations, State Department of Education, California. Information on the Number of minority students participating in the Controlled Open Enrollment Program was secured from Dr. Lewis A. Bonney, Assistant Superintendent for Research and Development, San Bernardino Unified School District. Three factors influenced the number of students participating in the program during various years. (1) High School boundaries were modified to achieve desegregation in 1970-71 resulting in high school students no longer being eligible for the program. (2, Pupils at two predominantly minority elementary schools (Allesandro and Mt. Vernon) were housed in integrated settings during 1971-72 and 1972-73 while their schools were being reconstructed. This resulted in no new enrollments from these two schools during those years. (3) Elementary enrollment declined by 14% between 1970-71 and 1972-73 school years. No Anglo-Americans (Other White) participated in the program at any time.

UNITED STATES' EXHIBIT 27.

Participation in a Voluntary Open Enrollment Program—Richmond Unified School District[a]

1967-1973

School Year	Total Minority Students in District (Black + Sp. Sur.)	Number of Minority Students Participating	Percent Participating
1969-70	13,380	1,005	7.5
1970-71	13,687	1,235	8.9
1971-72	13,786	1,554	11.3

[a] The information for calculating the total number of minority students in the school district was secured from the Bureau of Intergroup Relations, California State Department of Education, Information on the number of minority students participating in the open enrollment program was secured from Richmond Unified School District. Anglo-American (Other White) students did not volunteer to participate in the program.

DEFENDANTS' EXHIBIT E.

RACIAL AND ETHNIC DISTRIBUTION OF STUDENT ENROLLMENT AND CERTIFICATED EMPLOYEES IN THE PASADENA UNIFIED SCHOOL DISTRICT.

October 6, 1972

Research Report No. 72/73-01

Pasadena Unified School District
Department of Planning, Research and Development
December 1972

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FOREWORD.

This report presents a survey of the racial and ethnic distribution of students and certificated employees on a school-by-school basis as of October 6, 1972. The basic data collected for the individual reports were supplied by the Department of Personnel Services, Data Processing Services, Operations and Transportation Services, Division of Elementary Education, and the individual schools. A report for 1972-73 was completed for each school and submitted to the Department of Health, Education and Welfare.[1]

In addition to the 1970-71, 1971-72 and 1972-73 Racial and Ethnic Distribution of Enrollment, the full-time Professional Instructional Staff for 1972-73 is included. The definition for Full-Time Professional Instructional Staff given by the U. S. Department of Health, Education and Welfare, Office for Civil Rights, is the following:

> "Professional Instructional Staff" includes: Classroom teachers; principals; assistant principals; and those staff members who are supervisors of instruction, curriculum consultants, school librarians, non-classroom teachers (homebound, etc.), audio-visual staff, T. V. teachers, guidance counselors, and school psychologists.
>
> "Professional Instructional Staff: does NOT include: Chief administrative officer of the school system (superintendent); para-professional staff members (teacher's aides, student teachers, etc.); non-instructional staff members, such as attendance, business, financial, professional health personnel (doctors and nurses), school social workers, transportation, clerical, custodial, and food service personnel.

1. Fall, 1972, Elementary and Secondary School Civil Rights Survey Forms OS/CR 101—School System Summary Report and OS/CR 102—Individual School Campus Report.

The categories listed in this report include the following personnel:

Teachers—Classroom teachers, Miller-Unruh teachers, special education teachers assigned to a school, Opportunity, Resource, ESEA, reading teacher-specialists, special teachers, music teachers, project teachers, Junior High Student Advisors, etc.

Administrators—Principals and Assistant Principals.

Other Professional Instructional Staff—Counselors, Librarians, Deans, and Project Assistants.

Professional Staff at Education Center—Full-time professional instructional staff members (see definition preceding page) who are full-time in this school system, but who are *not* full-time staff members at one particular school campus. In addition, included in this category are teachers from the Special Education Department.

Since the enrollment figures in Research Reports 257a, 267a, 274a, 282a, 292, and 71/72-02 for 1966, 1967, 1968, 1969, 1970, and 1971 were reported in the six categories used then and still specified by the State Department of Education, enrollments are reported for the same six categories in this publication, Research Report 72/73-01. Also included in the Summary of this report are comparisons of student enrollments in Grades K-6, 7-12, and the District for the years 1966, 1967, 1968, 1969, 1970, 1971 and 1972.

For comparative purposes, a District Summary of Racial and Ethnic Distribution of Certificated Employees is given for the years 1966, 1967, 1968, 1969, 1970, 1971, and 1972. The summary includes Grades K-6, 7-12, and the District by Teachers, Administrators, and Other Professional Staff.

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CIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT - OCTOBER 6, 1972

	Spanish Surname		Anglo-Caucasian		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		TOTAL
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
L PRIMARY & EMENTARY CHOOLS K-6[a]													
upils - 1966	1243	7.1	10,831	62.0	4794	27.5	427	2.5	7	---	164	0.9	17.466
1967	1257	7.4	10,162	59.7	5069	29.8	416	2.4	13	0.1	103	0.6	17,020
1968	1400	8.4	9469	56.6	5274	31.6	419	2.5	18	0.1	139	0.8	16,719
1969	1497	9.2	8867	54.4	5393	33.1	376	2.3	25	0.2	136	0.8	16.294
1970	1565	10.3	7549	49.6	5521	36.3	389	2.6	28	0.2	156	1.0	15.208
1971	1658	11.8	6524	46.3	5397	38.3	366	2.6	29	0.2	108	0.8	14.082
1972	1653	12.4	5800	43.6	5355	40.3	330	2.5	29	0.2	137	1.0	13,304
1972													
Teachers	17	3.0	415	72.3	112	19.5	19	3.3	3	0.5	8	1.4	574
Administrators	1	3.1	27	84.4	4	12.5	0	---	0	---	0	---	32
Other Prof.[b]	0	---	1	33.3	2	66.7	0	---	0	---	0	---	3
LL JR. & SR. IGH SCHOOLS 7-12[a]													
Pupils - 1966	797	5.6	10,034	69.9	2833	19.7	535	3.7	5	---	149	1.1	14,373
1967	890	6.2	9788	67.9	3133	21.7	533	3.7	7	0.1	63	0.4	14.414
1968	994	6.9	9431	65.5	3377	23.5	510	3.5	10	0.1	78	0.5	14.400
1969	1011	7.1	8894	62.8	3733	26.4	444	3.1	7	0.1	77	0.5	14.166
1970	1080	7.9	8003	58.2	3997	29.1	454	3.3	45	0.3	167	1.2	13.746
1971	1159	8.7	7220	54.4	4314	32.5	431	3.3	18	0.1	128	1.0	13,270
1972	1197	9.4	6366	50.1	4606	36.3	396	3.1	28	0.2	115	0.9	12.708
1972													
Teachers	28	4.9	459	79.5	71	12.3	16	2.8	0	---	3	0.5	577
Administrators	2	8.3	19	79.2	3	12.5	0	---	0	---	0	---	24
Other Prof.[b]	2	3.5	44	77.2	11	19.3	0	---	0	---	0	---	57
ROOSEVELT SCHOOL FOR HANDICAPPED[c]													
Pupils - 1966	8	5.1	93	58.9	50	31.6	4	2.5	0	---	3	1.9	158
1967	11	7.0	89	56.7	51	32.5	5	3.2	0	---	1	0.6	157
1968	11	7.1	89	57.0	50	32.0	6	3.9	0	---	0	---	156
1969	13	8.0	98	60.5	47	29.0	4	2.5	0	---	0	---	162
1970	21	12.4	95	56.2	46	27.2	6	3.6	0	---	1	0.6	169
1971	21	11.5	99	54.1	58	31.7	4	2.2	0	---	1	0.5	183
1972	23	12.5	92	50.0	64	34.8	4	2.2	0	---	1	0.5	184
1972													
Teachers	1	5.0	15	75.0	3	15.0	1	5.0	0	---	0	---	20
Administrators	0	---	1	100.0	0	---	0	---	0	---	0	---	1
Other Prof.[b]	0	---	1	100.0	0	---	0	---	0	---	0	---	1

[a]Roosevelt School, Home Teaching, Five Acres, Hillside Episcopal Home, and EH Class - K-3 at Lincoln Elem. not included.
[b]Abbreviation for Professional Staff.
[c]Includes Home Teaching students.

NOTE: Includes employees who are employed 75% time or more.

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SUMMARY (continued)	Spanish Surname		Anglo-Caucasian		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		TOTAL
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
FIVE ACRES[a]													
Pupils - 1971	2	16.6	5	41.7	5	41.7	0	---	0	---	0	---	12
1972	1	11.1	7	77.8	1	11.1	0	---	0	---	0	---	9
Teachers	0	---	0	---	1	100.0	0	---	0	---	0	---	1
HILLSIDE EPISCOPAL HOME													
Pupils - 1972	2	20.0	4	40.0	4	40.0	0	---	0	---	0	---	10
Teachers	0	---	1	100.0	0	---	0	---	0	---	0	---	1
LINCOLN - E.H. CLASS. K-3													
Pupils - 1972	2	20.0	2	20.0	6	60.0	0	---	0	---	0	---	10
Teachers	0	---	1	100.0	0	---	0	---	0	---	0	---	1
ED. CENTER													
Pupils													
P. S.- 1967[b]	10	5.3	10	5.3	167	88.4	2	1.0	0	---	0	---	189
1968[b]	17	8.1	19	9.1	171	81.8	0	---	0	---	2	1.0	209
1971[c]	39	17.5	22	9.9	157	70.7	2	0.9	1	0.5	1	0.5	222
Professional Staff at Ed. Center, 1972[d]	0	---	35	81.4	8	18.6	0	---	0	---	0	---	43
DISTRICT TOTAL													
Pupils - 1966	2048	6.4	20,958	65.6	7677	24.0	966	3.0	12	---	316	1.0	31,977
1967[b]	2168	6.8	20,049	63.1	8420	26.5	956	3.0	20	0.1	167	0.5	31,780
1968[b]	2422	7.7	19,008	60.4	8872	28.2	935	2.9	28	0.1	219	0.7	31,484
1969	2521	8.2	17,859	58.3	9173	30.0	824	2.7	32	0.1	213	0.7	30,622
1970	2666	9.2	15,647	53.7	9364	32.8	849	2.9	73	0.3	324	1.1	29,123
1971[c]	2840	10.3	13,848	50.3	9774	35.5	801	2.9	47	0.2	237	0.8	27,547
1972	2878	11.0	12,271	46.8	10,036	38.3	730	2.8	57	0.2	253	0.9	26,225
Teachers, Classroom 1972	46	3.9	891	75.9	187	15.9	36	3.1	3	0.3	11	0.9	1,174
Admins. at Schools- 1972	3	5.3	47	82.4	7	12.3	0	---	0	---	0	---	57
Other Prof. Staff at Schools- 1972	2	3.3	46	75.4	13	21.8	0	---	0	---	0	---	61
Prof. Staff at Ed.Cntr.-1972[d]	0	---	35	81.4	8	18.6	0	---	0	---	0	---	43

[a] Students were included at Audubon Primary School for previous years.
[b] P. S. - Preschool reported for 1967 and 1968 and included in the district total.
[c] Preschool reported to the State Department as instructed but not included in district total for this report.
[d] Professional Staff at Education Center includes certificated personnel who work directly with students but are not assigned to any one school: psychologists, Special Education teachers, consultants, teacher specialists, etc. For 1972, the reading teacher specialists and the music teachers were assigned to a school.

RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT - OCTOBER 6, 1972

PRIMARY K-3	Spanish Surname		Anglo-Caucasian[1]		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		TOTAL
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
ALLENDALE													
Pupils - 1970	38	9.0	179	42.1	181	42.6	26	6.1	1	0.2	0	---	425
1971	32	8.4	157	41.1	161	42.1	29	7.6	0	---	3	0.8	382
1972	101	23.5	166	38.6	134	31.2	23	5.3	0	---	6	1.4	430
Teachers	1		13		5		1		0		0		20
Administrators	1		0		0		0		0		0		1
AUDUBON													
Pupils - 1970	27	4.7	293	51.2	227	39.7	20	3.5	1	0.2	4	0.7	572
1971	42	7.7	261	48.0	219	40.2	19	3.5	2	0.4	1	0.2	544
1972	37	6.7	237	42.7	256	46.1	15	2.7	2	0.4	8	1.4	555
Teachers	0		18		3		1		0		0		22
Administrators	0		1		0		0		0		0		1
BURBANK													
Pupils - 1970	26	4.6	328	57.8	204	36.0	9	1.6	0	---	0	---	567
1971	35	6.8	244	47.5	227	44.1	6	1.2	1	0.2	1	0.2	514
1972	37	8.9	202	48.7	168	40.5	4	0.9	2	0.5	2	0.5	415
Teachers	0		13		2		3		0		0		18
Administrators	0		1		0		0		0		0		1
DON BENITO													
Pupils - 1970	43	6.1	337	48.1	310	44.2	9	1.3	0	---	2	0.3	701
1971	34	5.3	308	47.8	291	45.2	8	1.2	0	---	3	0.5	644
1972	46	7.6	260	42.6	288	47.2	7	1.1	3	0.5	6	1.0	610
Teachers	3		22		4		1		0		0		30
Administrators	0		2		0		0		0		0		2
FRANKLIN													
Pupils - 1970	48	8.2	242	41.4	265	45.4	24	4.1	1	0.2	4	0.7	584
1971	58	10.6	201	36.8	270	49.5	16	2.9	0	---	1	0.2	546
1972	47	9.0	172	32.7	283	53.9	19	3.6	2	0.4	2	0.4	525
Teachers	1		16		7		0		0		0		24
Administrators	0		0		1		0		0		0		1
GARFIELD-ARROYO													
Pupils - 1970	80	30.5	122	46.6	56	21.4	3	1.1	0	---	1	0.4	262
1971	102	36.2	128	45.4	40	14.2	3	1.0	2	0.7	7	2.5	282
1972	- S C H O O L C L O S E D -												
HAMILTON													
Pupils - 1970	102	18.5	269	48.9	161	29.3	6	1.1	3	0.6	9	1.6	550
1971	89	15.1	251	42.5	223	37.7	12	2.0	4	0.7	12	2.0	591
1972	85	14.8	218	38.0	242	42.2	17	3.0	1	0.1	11	1.9	574
Teachers	2		19		4		1		1		0		27
Administrators	0		1		0		0		0		0		1

[1] The State reports use Other White to describe this category.

RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT - OCTOBER 6, 1972

PRIMARY K-3 (continued)	Spanish Surname		Anglo-Caucasian[1]		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		TOTAL
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
JEFFERSON													
Pupils - 1970	238	25.3	403	42.9	249	26.5	28	3.0	7	0.7	15	1.6	940
1971	279	30.6	362	39.7	211	23.2	27	3.0	8	0.9	24	2.6	911
1972	316	33.0	345	36.0	235	24.5	24	2.5	6	0.6	32	3.4	958
Teachers	4		32		7		0		0		0		43
Administrators	0		2		0		0		0		0		2
LINDA VISTA													
Pupils - 1970	2	1.1	102	58.3	57	32.6	13	7.4	0	---	1	0.6	175
1971	5	3.5	94	66.7	30	21.3	12	8.5	0	---	0	---	141
1972	51	16.7	143	46.9	92	30.2	19	6.2	0	---	0	---	305
Teachers	0		10		3		0		0		0		13
Administrators	0		1		0		0		0		0		1
McKINLEY													
Pupils - 1970	50	21.6	119	51.5	48	20.8	11	4.8	1	0.4	2	0.9	231
1971	56	23.4	98	41.0	71	29.7	12	5.0	0	---	2	0.9	239
1972			- S C H O O L		C L O S E		D -						
NOYES													
Pupils - 1970	24	5.1	245	51.6	187	39.4	14	2.9	0	---	5	1.0	475
1971	18	4.4	201	49.2	175	42.8	14	3.4	0	---	1	0.2	409
1972	18	4.8	168	44.3	177	46.7	11	2.9	0	---	5	1.3	379
Teachers	0		9		5		1		0		0		15
Administrators	0		1		0		0		0		0		1
SAN RAFAEL													
Pupils - 1970	14	4.4	169	53.7	119	37.8	8	2.5	0	---	5	1.6	315
1971	15	4.7	157	49.7	134	42.4	10	3.2	0	---	0	---	316
1972	18	4.5	207	51.2	169	41.8	10	2.5	0	---	0	---	404
Teachers	1		18		0		2		0		0		21
Administrators	0		0		1		0		0		0		1
SIERRA MADRE													
Pupils - 1970	46	8.0	305	53.0	200	34.8	12	2.1	0	---	12	2.1	575
1971	43	9.1	243	51.6	170	36.1	12	2.6	0	---	3	0.6	471
1972	42	9.1	253	54.5	157	33.8	8	1.7	0	---	4	0.9	464
Teachers	0		16		4		2		0		1		23
Administrators	0		1		0		0		0		0		1
SIERRA MESA													
Pupils - 1970	17	3.6	242	50.7	206	43.2	11	2.3	0	---	1	0.2	477
1971	20	4.5	222	50.4	192	43.5	6	1.4	0	---	1	0.2	441
1972	16	4.3	158	42.8	192	52.0	2	0.6	1	0.3	0	---	369
Teachers	0		13		2		1		0		0		16
Administrators	0		1		0		0		0		0		1

RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT - OCTOBER 6, 1972

PRIMARY K-3 (continued)	Spanish Surname		Anglo-Caucasian		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		TOTAL
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
WEBSTER													
Pupils - 1970	55	6.5	452	53.8	277	32.9	15	1.8	1	0.1	41	4.9	841
1971	55	7.6	415	57.1	236	32.5	17	2.3	0	---	4	0.5	727
1972	57	8.5	351	52.4	247	36.9	12	1.8	1	0.1	2	0.3	670
Teachers	0		22		4		1		0		2		29
Administrators	0		2		0		0		0		0		2
WILLARD													
Pupils - 1970	121	12.9	440	46.8	358	38.0	14	1.5	0	---	8	0.8	941
1971	136	16.3	386	46.2	299	35.8	12	1.4	2	0.2	1	0.1	836
1972	122	15.9	341	44.5	288	37.6	10	1.3	1	0.2	4	0.5	766
Teachers	1		24		7		0		0		0		32
Administrators	0		2		0		0		0		0		2
ALTERNATIVE PLANNING SCH.													
Pupils - 1972	4	14.3	18	64.3	5	17.8	1	3.6	0	---	0	---	28
Teachers	0		2		0		0		0		0		2
Administrators	0		1		0		0		0		0		1
PRIMARY TOTAL[a]													
Pupils - 1970	931	10.8	4247	49.2	3105	36.0	223	2.6	15	0.1	110	1.3	8,631
1971	1019	12.8	3728	46.6	2949	36.9	215	2.7	19	0.2	64	0.8	7,994
1972	997	13.4	3239	43.5	2933	39.4	182	2.4	19	0.2	82	1.1	7,452
Teachers	13		247		57		14		1		3		335
Administrators	1		16		2		0		0		0		19

[a]Roosevelt School, Home Teaching, Five Acres, Hillside Episcopal Home and E. H. Class - K-3 at Lincoln Elementary are not included.

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RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT - OCTOBER 6, 1972

ELEMENTARY 4-6	Spanish Surname		Anglo-Caucasian		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		TOTAL
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
PASADENA													
Pupils - 1970	57	8.3	342	50.0	265	38.7	14	2.1	2	0.3	4	0.6	684
1971	61	9.8	288	46.0	260	41.5	12	1.9	3	0.5	2	0.3	626
1972	50	8.1	278	45.1	266	43.2	16	2.6	1	0.2	5	0.8	616
Teachers	0		15		7		1		0		0		23
Administrators	0		2		0		0		0		0		2
CLEVELAND													
Pupils - 1970	14	3.4	214	52.3	169	41.3	11	2.7	0	---	1	0.3	409
1971	12	3.4	173	48.6	159	44.7	10	2.8	0	---	2	0.5	356
1972	12	3.9	142	46.1	143	46.4	9	2.9	0	---	2	0.7	308
Teachers	0		8		3		1		0		1		13
Administrators	0		0		1		0		0		0		1
EDISON													
Pupils - 1970	20	4.5	230	51.6	175	39.2	19	4.3	0	---	2	0.4	446
1971	21	5.1	195	46.9	177	42.5	18	4.3	0	---	5	1.2	416
1972	24	4.9	202	41.3	245	50.1	11	2.3	0	---	7	1.4	489
Teachers	0		13		4		0		0		1		18
Administrators	0		1		0		0		0		0		1
FIELD													
Pupils - 1970	31	5.5	318	56.4	201	35.6	13	2.3	0	---	1	0.2	564
1971	45	8.3	300	55.1	186	34.2	12	2.2	0	---	1	0.2	544
1972	46	8.1	288	51.0	219	38.8	12	2.1	0	---	0	---	565
Teachers	0		15		3		0		2		1		21
Administrators	0		1		0		0		0		0		1
HALE													
Pupils - 1970	51	9.6	310	58.3	152	28.6	13	2.3	3	0.6	3	0.6	532
1971	68	12.9	233	44.3	203	38.6	13	2.5	2	0.4	7	1.3	526
1972	61	11.5	245	46.3	201	37.9	16	3.0	0	---	7	1.3	530
Teachers	1		16		6		0		0		0		23
Administrators	0		1		0		0		0		0		1
JACKSON													
Pupils - 1970	106	15.6	308	45.3	219	32.2	35	5.2	3	0.4	9	1.3	680
1971	95	16.4	243	42.0	199	34.4	35	6.0	1	0.2	6	1.0	579
1972	95	18.9	212	42.1	163	32.4	25	5.0	2	0.4	6	1.2	503
Teachers	2		16		5		0		0		0		23
Administrators	0		1		0		0		0		0		1
Other Prof.	0		0		1		0		0		0		1

RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT - OCTOBER 6, 1972

ELEMENTARY 4-6 (continued)	Spanish Surname		Anglo-Caucasian		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		TOTAL
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
LINCOLN													
Pupils - 1970	77	14.8	214	41.0	222	42.5	7	1.3	0	---	2	0.4	522
1971	59	14.7	157	39.0	177	43.9	5	1.2	0	---	5	1.2	403
1972	71	19.8	128	35.6	150	41.8	4	1.1	1	0.3	5	1.4	359
Teachers	1		13		3		1		0		0		18
Administrators	0		1		0		0		0		0		1
Other Prof.	0		0		1		0		0		0		1
LOMA ALTA													
Pupils - 1970	27	4.3	318	50.7	268	42.8	12	1.9	0	--	2	0.3	627
1971	31	5.1	252	41.1	318	51.9	10	1.6	0	---	2	0.3	613
1972	24	4.9	194	39.7	261	53.4	8	1.6	0	---	2	0.4	489
Teachers	0		14		4		0		0		1		19
Administrators	0		1		0		0		0		0		1
LONGFELLOW													
Pupils - 1970	91	11.8	411	52.0	255	32.3	25	3.2	3	0.4	5	0.6	790
1971	84	11.6	357	49.4	262	36.2	16	2.2	2	0.3	2	0.3	723
1972	84	11.6	337	46.6	270	37.3	26	3.6	4	0.6	2	0.3	723
Teachers	0		23		5		1		0		0		29
Administrators	0		1		1		0		0		0		2
MADISON													
Pupils - 1970	149	22.1	298	44.3	199	29.6	9	1.3	2	0.3	16	2.4	673
1971	147	22.7	266	41.2	209	32.3	12	1.9	0	---	12	1.9	646
1972	160	24.2	239	36.2	231	34.9	11	1.7	1	0.1	19	2.9	661
Teachers	0	—	17		7		1		0		1		26
Administrators	0		1		0		0		0		0		1
WASHINGTON													
Pupils - 1970	11	1.7	339	52.2	291	44.8	8	1.2	0	---	1	0.1	650
1971	16	2.5	332	50.6	298	45.4	8	1.2	2	0.3	0	---	656
1972	27	4.6	289	49.2	261	44.5	9	1.5	1	0.2	0	---	587
Teachers	0		18		8		0		0		0		26
Administrators	0		1		0		0		0		0		1
Other Prof.	0		1		0		0		0		0		1
ALTERNATIVE PLANNING SCH.													
Pupils - 1972	2	9.1	7	31.8	12	54.6	1	4.5	0	---	0	---	22
Teachers[b]													
ELEMENTARY[a] TOTAL													
Pupils - 1970	634	9.7	3302	50.2	2416	36.7	166	2.5	13	0.2	46	0.7	6,577
1971	639	10.5	2796	45.9	2448	40.2	151	2.5	10	0.2	44	0.7	6,088
1972	656	11.2	2561	43.8	2422	41.4	148	2.5	10	0.2	55	0.9	5,852
Teachers	4		168		55		5		2		5		239
Administrators	0		11		2		0		0		0		13
Other Prof.	0		1		2		0		0		0		3

[a] Roosevelt School, Home Teaching, Hillside Episcopal Home and Five Acres not included.
[b] The total number of teachers and administrator for the Alternative Planning School is given on page 5.

RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT - OCTOBER 6, 1972

JUNIOR HIGH Grades 7 & 8	Spanish Surname No.	Spanish Surname Per Cent	Anglo-Caucasian No.	Anglo-Caucasian Per Cent	Negro No.	Negro Per Cent	Chinese, Japanese, Korean No.	Chinese, Japanese, Korean Per Cent	American Indian No.	American Indian Per Cent	Other Nonwhite No.	Other Nonwhite Per Cent	TOTAL No.
ELIOT													
Pupils - 1970	76	6.0	688	54.9	449	35.8	20	1.6	6	0.5	15	1.2	1,254
1971	67	5.9	569	50.2	466	41.1	25	2.2	2	0.2	5	0.4	1,134
1972	78	7.0	505	45.1	508	45.4	24	2.1	3	0.3	1	0.1	1,119
Teachers	2		38		8		2		0		1		51
Administrators	1		1		0		0		0		0		2
Other Prof.	0		4		0		0		0		0		4
McKINLEY													
Pupils - 1970	136	11.3	643	53.4	344	28.6	59	4.9	6	0.5	16	1.3	1,204
1971	129	11.5	561	49.8	365	32.4	45	4.0	0	---	26	2.3	1,126
1972	135	13.1	446	43.3	385	37.3	47	4.6	0	---	18	1.7	1,031
Teachers	2		40		6		2		0		1		51
Administrators	0		2		0		0		0		0		2
Other Prof.	0		3		1		0		0		0		4
WASHINGTON													
Pupils - 1970	38	4.3	460	52.5	336	38.3	26	3.0	3	0.3	14	1.6	877
1971	33	4.0	414	49.6	360	43.1	16	1.9	1	0.1	11	1.3	835
1972	47	6.1	337	43.6	370	47.9	12	1.6	3	0.4	3	0.4	772
Teachers	0		27		14		0		0		0		41
Administrators	0		1		1		0		0		0		2
Other Prof.	0		3		0		0		0		0		3
WILSON													
Pupils - 1970	131	11.2	663	56.8	335	28.7	28	2.4	1	0.1	10	0.8	1,168
1971	160	14.6	567	51.8	331	30.2	25	2.3	2	0.2	10	0.9	1,095
1972	154	14.8	448	42.9	409	39.2	22	2.1	3	0.3	7	0.7	1,043
Teachers	1		40		9		0		0		0		50
Administrators	0		2		0		0		0		0		2
Other Prof.	0		2		2		0		0		0		4
INTERMEDIATE OPPORTUNITY SCH.													
Pupils - 1970	3	10.7	12	42.9	13	46.4	0	---	0	---	0	---	28
1971	4	7.7	16	30.8	25	48.1	0	---	2	3.8	5	9.6	52
1972	3	7.9	6	15.8	29	76.3	0	---	0	---	0	---	38
Teachers	0		3		3		0		0		0		6
Administrators	0		1		0		0		0		0		1
Other Prof.	0		0		0		0		0		0		0
ALTERNATIVE PLANNING SCH.													
Pupils - 1972	3	20.0	9	60.0	3	20.0	0	---	0	---	0	---	15
Teachers[a]													
JUNIOR HIGH[b] TOTAL 7 & 8													
Pupils - 1970	384	8.5	2466	54.4	1477	32.6	133	2.9	16	0.4	55	1.2	4,531
1971	393	9.3	2127	50.1	1547	36.5	111	2.6	7	0.2	57	1.3	4,242
1972	420	10.5	1751	43.6	1704	42.4	105	2.6	9	0.2	29	0.7	4,018
Teachers	5		148		40		4		0		2		199
Administrators	1		7		1		0		0		0		9
Other Prof.	0		12		3		0		0		0		15

The total number of teachers and administrator for the Alternative Planning School is given on page 5.
Roosevelt School and Home Teaching not included.

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RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT - OCTOBER 6, 1972

SENIOR HIGH Grades 9-12	Spanish Surname No.	Spanish Surname Per Cent	Anglo-Caucasian No.	Anglo-Caucasian Per Cent	Negro No.	Negro Per Cent	Chinese, Japanese, Korean No.	Chinese, Japanese, Korean Per Cent	American Indian No.	American Indian Per Cent	Other Nonwhite No.	Other Nonwhite Per Cent	TOTAL No.
BLAIR HIGH													
Pupils - 1970	222	12.3	1044	57.9	437	24.2	77	4.3	5	0.3	19	1.0	1,804
1971	217	12.5	1027	59.4	399	23.1	73	4.2	1	0.1	13	0.7	1,730
1972	244	14.0	969	55.8	438	25.2	67	3.9	2	0.1	18	1.0	1,738
Teachers	5		64		5		3		0		0		77
Administrators	0		4		0		0		0		0		4
Other Prof.	0		8		2		0		0		0		10
MUIR HIGH													
Pupils - 1970	162	5.7	1420	50.2	1039	36.7	176	6.2	1	0.0	33	1.2	2,831
1971	132	5.0	1325	49.9	1019	38.3	163	6.1	1	0.0	18	0.7	2,658
1972	126	4.7	1293	48.6	1090	41.0	123	4.6	6	0.2	23	0.9	2,661
Teachers	8		95		13		4		0		0		120
Administrators	1		2		1		0		0		0		4
Other Prof.	1		9		4		0		0		0		14
PASADENA HIGH													
Pupils - 1970	306	6.9	2987	67.1	1010	22.7	68	1.5	23	0.5	59	1.3	4,453
1971	379	9.0	2506	59.3	1213	28.7	82	1.9	8	0.2	40	0.9	4,228
1972	379	9.8	2027	52.5	1302	33.8	98	2.5	10	0.3	43	1.1	3,859
Teachers	9		137		13		4		0		1		164
Administrators	0		3		1		0		0		0		4
Other Prof.	1		15		2		0		0		0		18
EVENING HIGH													
Pupils - 1971	4	8.3	42	87.5	2	4.2	0	---	0	---	0	---	48
1972	8	4.1	158	81.9	24	12.5	2	1.0	0	---	1	0.5	193
Teachers	0		2		0		1		0		0		3
Administrators	0		1		0		0		0		0		1
FOOTHILL HIGH													
Pupils - 1970	6	4.7	86	67.7	34	26.8	0	---	0	---	1	0.8	127
1971	34	9.3	193	53.0	134	36.8	2	0.6	1	0.3	0	---	364
1972	18	8.4	153	71.5	41	19.1	0	---	1	0.5	1	0.5	214
Teachers	1		13		0		0		0		0		14
Administrators	0		2		0		0		0		0		2
Other Prof.	0		0		0		0		0		0		0
ALTERNATIVE PLANNING SCH.													
Pupils - 1972	2	8.0	15	60.0	7	28.0	1	4.0	0	---	0	---	25
Teachers[a]													
SENIOR HIGH[b] TOTAL 9-12													
Pupils - 1970	696	7.6	5537	60.1	2520	27.3	321	3.5	29	0.3	112	1.2	9,215
1971	766	8.5	5093	56.4	2767	30.7	320	3.5	11	0.1	71	0.8	9,028
1972	777	9.0	4615	53.1	2902	33.4	291	3.3	19	0.2	86	1.0	8,690
Teachers	23		311		31		12		0		1		378
Administrators	1		12		2		0		0		0		15
Other Prof.	2		32		8		0		0		0		42

[a]The total number of teachers and administrator for the Alternative Planning School is given on page 5.
[b]Roosevelt School and Home Teaching not included.

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DISTRICT SUMMARY OF RACIAL AND ETHNIC DISTRIBUTION OF CERTIFICATED EMPLOYEES

SUMMARY	Spanish Surname		Anglo-Caucasian		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		TOTAL
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
ALL PRIMARY & ELEMENTARY SCHOOLS K-6[a]													
Teachers													
1966	7	1.1	544	84.6	78	12.1	14	2.2	0	---	0	---	643
1967	5	0.8	523	86.3	67	11.1	11	1.8	0	---	0	---	606
1968	3	0.5	465	84.1	74	13.4	11	2.0	0	---	0	---	553
1969	7	1.3	463	82.7	78	13.9	9	1.6	0	---	3	0.5	560
1970	10	1.6	498	79.6	99	15.8	13	2.1	1	0.1	5	0.8	626[b]
1971	11	1.9	440	75.3	108	18.5	15	2.6	3	0.5	7	1.2	584
1972	17	3.0	415	72.3	112	19.5	19	3.3	3	0.5	8	1.4	574
Administrators													
1966	0	---	31	91.2	3	8.8	0	---	0	---	0	---	34
1967	0	---	30	91.0	3	9.0	0	---	0	---	0	---	33
1968	1	3.0	30	90.9	2	6.1	0	---	0	---	0	---	33
1969	1	3.0	30	90.9	2	6.1	0	---	0	---	0	---	33
1970	1	3.0	29	87.9	3	9.1	0	---	0	---	0	---	33
1971	1	3.0	28	84.9	4	12.1	0	---	0	---	0	---	33
1972	1	3.1	27	84.4	4	12.5	0	---	0	---	0	---	32
Other Prof.[c]													
1966	1	5.9	15	88.2	1	5.9	0	---	0	---	0	---	17
1967	1	3.6	26	92.8	1	3.6	0	---	0	---	0	---	28
1968	2	4.0	38	76.0	10	20.0	0	---	0	---	0	---	50
1969	1	2.6	28	73.7	9	23.7	0	---	0	---	0	---	38[b]
1970	0	---	0	---	0	---	0	---	0	---	0	---	0
1971	0	---	3	60.0	2	40.0	0	---	0	---	0	---	5
1972	0	---	1	33.3	2	66.7	0	---	0	---	0	---	3
ALL JR. & SR. HIGH SCHOOLS 7-12[a]													
Teachers													
1966	12	1.9	590	92.0	34	5.3	4	0.6	0	---	1	0.2	641
1967	12	1.9	579	91.6	37	5.9	4	0.6	0	---	0	---	632
1968	9	1.4	565	90.6	46	7.4	4	0.6	0	---	0	---	624
1969	11	2.0	490	89.4	38	6.9	7	1.3	0	---	2	0.4	548
1970	32	5.3	495	82.1	61	10.1	11	1.8	1	0.2	3	0.5	603
1971	28	4.6	492	80.2	73	11.9	17	2.8	0	---	3	0.5	613
1972	28	4.9	459	79.5	71	12.3	16	2.8	0	---	3	0.5	577
Administrators													
1966	1	3.7	25	92.6	1	3.7	0	---	0	---	0	---	27
1967	1	3.7	25	92.6	1	3.7	0	---	0	---	0	---	27
1968	1	3.5	25	86.2	3	10.3	0	---	0	---	0	---	29
1969	2	7.7	21	80.8	3	11.5	0	---	0	---	0	---	26
1970	3	13.0	18	78.3	2	8.7	0	---	0	---	0	---	23
1971	2	8.7	18	78.3	3	13.0	0	---	0	---	0	---	23
1972	2	8.3	19	79.2	3	12.5	0	---	0	---	0	---	24

For footnotes, see page 13.

DISTRICT SUMMARY OF RACIAL AND ETHNIC DISTRIBUTION OF CERTIFICATED EMPLOYEES

SUMMARY (continued)	Spanish Surname		Anglo-Caucasian		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		TOTAL
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
Other Prof.[c]													
1966	2	3.0	57	85.1	7	10.4	1	1.5	0	---	0	---	67
1967	1	1.4	62	89.9	6	8.7	0	---	0	---	0	---	69
1968	1	1.7	47	81.1	9	15.5	1	1.7	0	---	0	---	58
1969	0	---	52	86.7	8	13.3	0	---	0	---	0	---	60
1970	2	3.2	46	73.0	15	23.8	0	---	0	---	0	---	63
1971	2	3.5	46	79.3	10	17.2	0	---	0	---	0	---	58
1972	2	3.5	44	77.2	11	19.3	0	---	0	---	0	---	57
ROOSEVELT SCHOOL FOR HANDICAPPED													
Teachers													
1966	0	---	14	100.0	0	---	0	---	0	---	0	---	14
1967	0	---	14	100.0	0	---	0	---	0	---	0	---	14
1968	0	---	14	100.0	0	---	0	---	0	---	0	---	14
1969	0	---	15	100.0	0	---	0	---	0	---	0	---	15
1970	1	6.2	14	87.6	1	6.2	0	---	0	---	0	---	16
1971	1	5.6	16	88.8	1	5.6	0	---	0	---	0	---	18
1972	1	5.0	15	75.0	3	15.0	1	5.0	0	---	0	---	20
Administrators													
1966	0	---	1	100.0	0	---	0	---	0	---	0	---	1
1967	0	---	1	100.0	0	---	0	---	0	---	0	---	1
1968	0	---	1	100.0	0	---	0	---	0	---	0	---	1
1969	0	---	1	100.0	0	---	0	---	0	---	0	---	1
1970	0	---	1	100.0	0	---	0	---	0	---	0	---	1
1971	0	---	1	100.0	0	---	0	---	0	---	0	---	1
1972	0	---	1	100.0	0	---	0	---	0	---	0	---	1
Other Prof.													
1967	0	---	1	100.0	0	---	0	---	0	---	0	---	1
1968	0	---	1	100.0	0	---	0	---	0	---	0	---	1
1972	0	---	1	100.0	0	---	0	---	0	---	0	---	1
OTHERS[d]													
Teachers 1971	0	---	1	100.0	0	---	0	---	0	---	0	---	1
1972	0	---	2	66.7	1	33.3	0	---	0	---	0	---	3
ED. CENTER													
Professional Staff at Ed. Center[e]													
1966	1	1.0	90	91.8	7	7.2	0	---	0	---	0	---	98
1967	2	2.3	78	91.8	5	5.9	0	---	0	---	0	---	85
1968	2	2.7	60	81.1	12	16.2	0	---	0	---	0	---	74
1969	1	2.3	37	86.1	5	11.6	0	---	0	---	0	---	43
1970	1	1.7	54	90.0	5	8.3	0	---	0	---	0	---	60
1971	0	---	42	77.8	12	22.2	0	---	0	---	0	---	54
1972	0	---	35	81.4	8	18.6	0	---	0	---	0	---	43

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DISTRICT SUMMARY OF
RACIAL AND ETHNIC DISTRIBUTION OF CERTIFICATED EMPLOYEES

SUMMARY (continued)	Surname Spanish		Anglo-Caucasian		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		TOTAL
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
DISTRICT TOTAL													
Classroom Teachers													
1966	19	1.5	1148	88.4	112	8.6	18	1.4	0	---	1	0.1	1298
1967	17	1.4	1116	89.1	104	8.3	15	1.2	0	---	0	---	1252
1968	12	1.0	1044	87.7	120	10.1	15	1.2	0	---	0	---	1191
1969	18	1.6	968	86.2	116	10.3	16	1.4	0	---	5	0.5	1123
1970	43	3.5	1007	80.9	161	12.9	24	1.9	2	0.2	8	0.6	1245[b]
1971	40	3.3	949	78.0	182	15.0	32	2.6	3	0.3	10	0.8	1216
1972	46	3.9	891	75.9	187	15.9	36	3.1	3	0.3	11	0.9	1174
Administrators at Schools													
1966	1	1.6	57	91.9	4	6.5	0	---	0	---	0	---	62
1967	1	1.6	56	91.8	4	6.6	0	---	0	---	0	---	61
1968	2	3.2	56	88.9	5	7.9	0	---	0	---	0	---	63
1969	3	5.0	52	86.7	5	8.3	0	---	0	---	0	---	60
1970	4	7.0	48	84.2	5	8.8	0	---	0	---	0	---	57
1971	3	5.3	47	82.4	7	12.3	0	---	0	---	0	---	57
1972	3	5.3	47	82.4	7	12.3	0	---	0	---	0	---	57
Other Prof. Staff at Schools													
1966	3	3.6	72	85.7	8	9.5	1	1.2	0	---	0	---	84
1967	2	2.0	89	90.8	7	7.2	0	---	0	---	0	---	98
1968	3	2.8	86	78.9	19	17.4	1	0.9	0	---	0	---	109
1969	1	1.0	80	81.6	17	17.4	0	---	0	---	0	---	98
1970	2	3.2	46	73.0	15	23.8	0	---	0	---	0	---	63[b]
1971	2	3.2	49	77.8	12	19.0	0	---	0	---	0	---	63
1972	2	3.3	46	75.4	13	21.3	0	---	0	---	0	---	61
Prof. Staff at Ed. Center													
1966	1	1.0	90	91.8	7	7.2	0	---	0	---	0	---	98
1967	2	2.3	78	91.8	5	5.9	0	---	0	---	0	---	85
1968	2	2.7	60	81.1	12	16.2	0	---	0	---	0	---	74
1969	1	2.3	37	86.1	5	11.6	0	---	0	---	0	---	43
1970	1	1.7	54	90.0	5	8.3	0	---	0	---	0	---	60
1971	0	---	42	77.8	12	22.2	0	---	0	---	0	---	54
1972	0	---	35	81.4	8	18.6	0	---	0	---	0	---	43

For footnotes, see page 13.

Footnotes for DISTRICT SUMMARY

a. Roosevelt School and Five Acres, since 1971, not included. Five Acres certificated personnel has been included with Audubon School previous to 1971.

b. The 1970 Report to HEW required that 60 Special Teachers (Miller-Unruh, Opportunity, Special Reading, etc.) be reported with *Classroom Teachers* which accounts for much of the increase in Classroom Teachers over the number in 1969. These *Special Teachers* were reported with *Other Professional Staff* in 1969. The relatively smaller number of Classroom Teachers in 1969 was caused by two factors: cutting high school from six to five periods in 1969-70 and cutting back on the number of kindergarten teachers in 1968-69 and 1969-70.

c. Abbreviation for Professional Staff.

d. *Others* include:
Teacher 1971—Five Acres
1972—Five Acres, Hillside Episcopal Home, and Lincoln—E. H. Class, K-3.

e. *Professional Staff at Education Center* 1966 through 1971 includes certificated personnel who work directly with students but are not assigned to any one school: reading teacher specialists, psychologists, Special Education teachers, consultants, music teachers, etc. For 1972, the Reading Teacher Specialists and Music Teachers were assigned to a school rather than included with Education Center personnel.

DEFENDANTS' EXHIBIT F.

RACIAL AND ETHNIC DISTRIBUTION
OF ENROLLMENTS

October 5, 1973

Research Report No. 73/74-03

Pasadena Unified School District

Department of Planning, Research and Development

October 31, 1973

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PASADENA UNIFIED SCHOOL DISTRICT
Department of Planning, Research and Development
October 31, 1973

RACIAL AND ETHNIC DISTRIBUTION BY GRADE LEVEL
October Enrollments - 1969 through 1973

GRADE	YEAR	Spanish Surname No.	Spanish Surname Per Cent	Anglo-Caucasian No.	Anglo-Caucasian Per Cent	Negro No.	Negro Per Cent	Chinese, Japanese, Korean No.	Chinese, Japanese, Korean Per Cent	American Indian No.	American Indian Per Cent	Other Nonwhite No.	Other Nonwhite Per Cent	TOTAL No.
DISTRICT TOTAL														
	Oct. 1969	2521	8.2	17,859	58.3	9173	30.0	824	2.7	32	0.1	213	0.7	30,622
	Oct. 1970	2666	9.2	15,647	53.7	9564	32.8	849	2.9	73	0.3	324	1.1	29,123
	Oct. 1971	2840	10.3	13,848	50.3	9774	35.5	801	2.9	47	0.2	237	0.8	27,547
	Oct. 1972	2878	11.0	12,271	46.8	10,036	38.3	730	2.8	57	0.2	253	0.9	26,225
	Oct. 1973	3087	12.2	11,188	44.0	10,155	40.0	672	2.6	56	0.2	256	1.0	25,414
K-6*	Oct. 1969	1497	9.2	8867	54.4	5393	33.1	376	2.3	25	0.2	136	0.8	16,294
	Oct. 1970	1565	10.3	7549	49.6	5521	36.3	389	2.6	28	0.2	156	1.0	15,208
	Oct. 1971	1658	11.8	6524	46.3	5397	38.3	366	2.6	29	0.2	108	0.8	14,082
	Oct. 1972	1653	12.4	5800	43.6	5355	40.3	330	2.5	29	0.2	137	1.0	13,304
	Oct. 1973	1752	13.7	5367	41.8	5246	40.9	313	2.4	27	0.2	134	1.0	12,839
7-12*	Oct. 1969	1011	7.1	8894	62.8	3733	26.4	444	3.1	7	0.1	77	0.5	14,166
	Oct. 1970	1080	7.9	8003	58.2	3997	29.1	454	3.3	45	0.3	167	1.2	13,746
	Oct. 1971	1159	8.7	7220	54.4	4314	32.5	431	3.3	18	0.1	128	1.0	13,270
	Oct. 1972	1197	9.4	6366	50.1	4606	36.3	396	3.1	28	0.2	115	0.9	12,708
	Oct. 1973	1304	10.5	5719	46.2	4848	39.2	353	2.9	29	0.2	121	1.0	12,374
SUB-TOTAL, K-12*														
	Oct. 1969	2508	8.2	17,761	58.3	9126	30.0	820	2.7	32	0.1	213	0.7	30,460
	Oct. 1970	2645	9.1	15,552	53.7	9518	32.9	843	2.9	73	0.3	323	1.1	28,954
	Oct. 1971	2817	10.3	13,744	50.2	9711	35.5	797	2.9	47	0.2	236	0.9	27,352
	Oct. 1972	2850	10.9	12,166	46.8	9961	38.3	726	2.8	57	0.2	252	1.0	26,012
	Oct. 1973	3056	12.1	11,086	44.0	10,094	40.0	666	2.7	56	0.2	255	1.0	25,213
OTHERS **														
	Oct. 1969	13	8.0	98	60.5	47	29.0	4	2.5	0	0.0	0	0.0	162
	Oct. 1970	21	12.4	95	56.2	46	27.2	6	3.6	0	0.0	1	0.6	169
	Oct. 1971	23	11.8	104	53.3	63	32.3	4	2.1	0	0.0	1	0.5	195
	Oct. 1972	28	13.1	105	49.3	75	35.2	4	1.9	0	0.0	1	0.5	213
	Oct. 1973	31	15.4	102	50.7	61	30.4	6	3.0	0	0.0	1	0.5	201

* Enrollment without Roosevelt Sch., Home Teaching, Five Acres, Hillside Epis. Home, & EH Class - K-3 at Lincoln Elem.

** Including Roosevelt Sch., Home Teaching, Five Acres, Hillside Epis. Home, & EH Class - K-3 at Lincoln Elem.

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LEVEL AND SCHOOLS	Spanish Surname No.	Spanish Surname Per Cent	Anglo-Caucasian No.	Anglo-Caucasian Per Cent	Negro No.	Negro Per Cent	Chinese, Japanese, Korean No.	Chinese, Japanese, Korean Per Cent	American Indian No.	American Indian Per Cent	Other Nonwhite No.	Other Nonwhite Per Cent	TOTAL No.
PRIMARY K-3													
Allendale	78	18.8	149	35.9	165	39.8	16	3.8	2	0.5	5	1.2	415
Audubon	37	7.9	186	39.6	226	48.1	13	2.7	2	0.4	6	1.3	470
Burbank	46	11.6	194	48.7	153	38.4	4	1.0	1	0.3	-	---	398
Don Benito	47	9.2	209	40.7	241	47.0	9	1.7	2	0.4	5	1.0	513
Franklin	38	8.5	149	33.4	236	52.9	18	4.1	-	---	5	1.1	446
Hamilton	121	22.4	182	33.7	203	37.6	19	3.5	2	0.4	13	2.4	540
Jefferson	243	30.6	301	38.0	214	27.0	16	2.0	2	0.3	17	2.1	793
Linda Vista	65	17.8	165	45.2	109	29.9	22	6.0	-	---	4	1.1	365
Noyes	20	5.7	149	42.3	172	48.9	8	2.3	-	---	3	0.8	352
San Rafael	76	18.6	156	38.2	165	40.5	8	2.0	-	---	3	0.7	409
Sierra Madre	58	12.2	240	50.4	166	34.9	8	1.7	1	0.2	3	0.6	476
Sierra Mesa	15	4.9	116	38.2	168	55.3	3	1.0	1	0.3	1	0.3	304
Webster	81	12.6	335	52.0	216	33.5	7	1.1	-	---	5	0.8	644
Willard	133	19.9	296	44.4	226	33.9	10	1.5	-	---	2	0.3	667
Alternative Sch.	8	9.0	47	52.8	27	30.4	5	5.6	2	2.2	-	---	89
Marshall Fund.	34	12.7	129	48.1	89	33.2	8	3.0	1	0.4	7	2.6	268
TOTAL, K-3*	1100	15.4	3003	42.0	2776	38.9	174	2.4	16	0.2	79	1.1	7148
ELEMENTARY 4-6													
Altadena	40	7.0	252	43.9	261	45.5	17	2.9	-	---	4	0.7	574
Cleveland	12	4.7	115	45.3	120	47.2	7	2.8	-	---	-	---	254
Edison	16	3.6	163	36.3	255	56.8	9	2.0	-	---	6	1.3	449
Field	53	9.4	282	49.7	219	38.6	13	2.3	-	---	-	---	567
Hale	66	14.5	201	44.3	168	37.0	13	2.9	-	---	6	1.3	454
Jackson	70	15.2	206	44.8	152	33.1	24	5.2	1	0.2	7	1.5	460
Lincoln	79	24.6	107	33.2	128	39.8	4	1.2	-	---	4	1.2	322
Loma Alta	15	3.4	153	34.0	271	60.2	10	2.2	-	---	1	0.2	450
Longfellow	68	10.0	289	42.4	299	43.9	18	2.6	5	0.7	3	0.4	682
Madison	174	28.1	197	31.8	226	36.4	8	1.3	3	0.5	12	1.9	620
Washington	27	5.0	243	45.2	258	47.9	8	1.5	-	---	2	0.4	538
Alternative Sch.	8	10.5	37	48.7	25	32.9	3	4.0	2	2.6	1	1.3	
Marshall Fund.	24	9.8	119	48.6	88	35.9	5	2.0	-	---	9	3.7	245
TOTAL, 4-6*	652	11.5	2364	41.5	2470	43.4	139	2.4	11	0.2	55	1.0	5691
TOTAL, K-6*	1752	13.7	5367	41.8	5246	40.9	313	2.4	27	0.2	134	1.0	12,839

*Totals without pupils at Roosevelt, Home Teaching, Five Acres, Hillside Episcopal Home, and EH Class - K-3 at Lincoln Elementary.

LEVEL AND SCHOOLS	Spanish Surname No.	Spanish Surname Per Cent	Anglo-Caucasian No.	Anglo-Caucasian Per Cent	Negro No.	Negro Per Cent	Chinese, Japanese, Korean No.	Chinese, Japanese, Korean Per Cent	American Indian No.	American Indian Per Cent	Other Nonwhite No.	Other Nonwhite Per Cent	TOTAL No.
Brought Forward K-6*	1752	13.7	5367	41.8	5246	40.9	313	2.4	27	0.2	134	1.0	12,839
JUNIOR HIGH 7-8													
Eliot	82	7.7	413	38.9	545	51.3	16	1.5	2	0.2	4	0.4	1062
McKinley	141	15.5	344	37.7	362	39.7	45	4.9	3	0.3	17	1.9	912
Washington	37	5.7	285	44.1	313	48.5	6	0.9	4	0.6	1	0.2	646
Wilson	155	16.2	360	37.5	418	43.5	17	1.8	2	0.2	8	0.8	960
Intermediate Opportunity	4	14.3	6	21.4	18	64.3	--	---	-	---	-	---	28
Alternative Sch.	7	14.9	22	46.8	16	34.1	1	2.1	1	2.1	-	---	47
Marshall Fund.	38	12.1	164	52.4	101	32.3	5	1.6	-	---	5	1.6	313
TOTAL, 7-8*	464	11.7	1594	40.2	1773	44.7	90	2.2	12	0.3	35	0.9	3968
SENIOR HIGH 9-12													
Blair	284	16.2	898	51.2	484	27.6	62	3.5	4	0.2	22	1.3	1754
Foothill	22	9.7	121	53.5	82	36.3	1	0.5	-	---	--	---	226
Muir	156	5.8	1163	43.3	1219	45.4	117	4.4	4	0.2	25	0.9	2684
PHS	346	10.2	1690	49.6	1241	36.5	82	2.4	8	0.2	37	1.1	3404
Alternative Sch.	10	14.3	40	57.2	18	25.7	1	1.4	1	1.4	-	---	70
Evening High	22	8.2	213	79.5	31	11.6	-	---	-	---	2	0.7	268
TOTAL, 9-12*	840	10.0	4125	49.1	3075	36.6	263	3.1	17	0.2	86	1.0	8406
SUB-TOTAL, K-12*	3056	12.1	11,086	44.0	10,094	40.0	666	2.7	56	0.2	255	1.0	25,213
Roosevelt:													
K-6	19	14.6	63	48.5	41	31.5	6	4.6	-	---	1	0.8	130
7-12	5	13.5	22	59.5	10	27.0	-	---	-	---	-	---	37
Five Acres, 1-6	1	10.0	8	80.0	1	10.0	-	---	-	---	-	---	10
Home Teaching													
K-3	1	33.3	2	66.7	-	----	-	---	-	---	-	---	3
4-6	1	50.0	1	50.0	-	----	-	---	-	---	-	---	2
7-12	1	12.5	4	50.0	3	37.5	-	---	-	---	-	---	8
Hillside Episcopal Home	-	---	1	25.0	3	75.0	-	---	-	---	-	---	4
Lincoln - E.H. Class, K-3	3	42.9	1	14.2	3	42.9	-	---	-	---	-	---	7
DISTRICT TOTAL	3087	12.2	11,188	44.0	10,155	40.0	672	2.6	56	0.2	256	1.0	25,414

*Totals without pupils at Roosevelt, Home Teaching, Five Acres, Hillside Episcopal Home, and EH Class - K-3 at Lincoln Elementary.

RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT
FOR FRANKLIN, SIERRA MESA, EDISON, LOMA ALTA AND ELIOT
OCTOBER 1970 THROUGH OCTOBER 1973

SCHOOL (Grades)	Spanish Surname No.	Spanish Surname Per Cent	Anglo Caucasian No.	Anglo Caucasian Per Cent	Negro No.	Negro Per Cent	Chinese, Japanese, Korean No.	Chinese, Japanese, Korean Per Cent	American Indian No.	American Indian Per Cent	Other Nonwhite No.	Other Nonwhite Per Cent	T
FRANKLIN (K-3													
Pupils - 1970	48	8.2	242	41.4	265	45.4	24	4.1	1	0.2	4	0.7	
1971	58	10.6	201	36.8	270	49.5	16	2.9	0	--	1	0.2	
1972	47	9.0	172	32.7	283	53.9	19	3.6	2	0.4	2	0.4	
1973	38	8.5	149	33.4	236	52.9	18	4.1	0	--	5	1.1	
SIERRA MESA (K-3)													
Pupils - 1970	17	3.6	242	50.7	206	43.2	11	2.3	0	--	1	0.2	
1971	20	4.5	222	50.4	192	43.5	6	1.4	0	--	1	0.2	
1972	16	4.3	158	42.8	192	52.0	2	0.6	1	0.3	0	--	
1973	15	4.9	116	38.2	168	55.3	3	1.0	1	0.3	1	0.3	
EDISON (4-6)													
Pupils - 1970	20	4.5	230	51.6	175	39.2	19	4.3	0	--	2	0.4	
1971	21	5.1	195	46.9	177	42.5	18	4.3	0	--	5	1.2	
1972	24	4.9	202	41.3	245	50.1	11	2.3	0	--	7	1.4	
1973	16	3.6	163	36.3	255	56.8	9	2.0	0	--	6	1.3	
LOMA ALTA (4-6)													
Pupils - 1970	27	4.3	318	50.7	268	42.8	12	1.9	0	--	2	0.3	
1971	31	5.1	252	41.1	318	51.9	10	1.6	0	--	2	0.3	
1972	24	4.9	194	39.7	261	53.4	8	1.6	0	--	2	0.4	
- - 1973	15	3.4	153	34.0	271	60.2	10	2.2	0	--	1	0.2	
ELIOT (7-8)													
Pupils - 1970	76	6.0	688	54.9	449	35.8	20	1.6	6	0.5	15	1.2	
1971	67	5.9	569	50.2	466	41.1	25	2.2	2	0.2	5	0.4	
1972	78	7.0	505	45.1	508	45.4	24	2.1	3	0.3	1	0.1	
1973	82	7.7	413	38.9	545	51.3	16	1.5	2	0.2	4	0.4	

RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT FOR
MCKINLEY, WASHINGTON AND WILSON - OCTOBER 1970 THROUGH OCTOBER 1973
January 30, 1974

	Spanish Surname No.	Spanish Surname Per Cent	Anglo-Caucasian No.	Anglo-Caucasian Per Cent	Negro No.	Negro Per Cent	Chinese, Japanese, Korean No.	Chinese, Japanese, Korean Per Cent	American Indian No.	American Indian Per Cent	Other Nonwhite No.	Other Nonwhite Per Cent	TOTAL No.
MCKINLEY													
Pupils - 1970	136	11.3	643	53.4	344	28.6	59	4.9	6	0.5	16	1.3	1,204
1971	129	11.5	561	49.8	365	32.4	45	4.0	0	---	26	2.3	1,126
1972	135	13.1	446	43.3	385	37.3	47	4.6	0	---	18	1.7	1,031
1973	141	15.5	344	37.7	362	39.7	45	4.9	3	0.3	17	1.9	912
WASHINGTON													
Pupils - 1970	38	4.3	460	52.5	336	38.3	26	3.0	3	0.3	14	1.6	877
1971	33	4.0	414	49.6	360	43.1	16	1.9	1	0.1	11	1.3	835
1972	47	6.1	337	43.6	370	47.9	12	1.6	3	0.4	3	0.4	772
1973	37	5.7	285	44.1	313	48.5	6	0.9	4	0.6	1	0.2	646
WILSON													
Pupils - 1970	131	11.2	663	56.8	335	28.7	28	2.4	1	0.1	10	0.8	1,168
1971	160	14.6	567	51.8	331	30.2	25	2.3	2	0.2	10	0.9	1,095
1972	154	14.8	448	42.9	409	39.2	22	2.1	3	0.3	7	0.7	1,043
1973	155	16.2	360	37.5	418	43.5	17	1.8	2	0.2	8	0.8	960

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DEFENDANTS' EXHIBIT K.

PASADENA UNIFIED SCHOOL DISTRICT
Decline in Anglo-Caucasian Enrollment
February 21, 1974

	Year	Caucasian Enrollment[a]	Caucasian Enrollment Decrease	% Decrease Each Year*	Total % Decrease 1969-1973
K-12	1964	21,695			
	1965	21,488	—207	—1.0	
	1966	20,958	—530	—2.5	
	1967	20,049	—909	—4.3	
	1968	19,008	—1041	—5.2	
	1969	17,859	—1149	—6.0	
	1970**	15,647	—2212	—12.4	
	1971	13,848	—1799	—11.5	
	1972	12,271	—1577	—11.4	
	1973	11,188	—1083	—8.8	—37.4% (—6,671)
K-6	1969	8,867			
	1970**	7,549	—1318	—14.9	
	1971	6,524	—1025	—13.6	
	1972	5,800	—724	—11.1	
	1973	5,367	—433	—7.5	—39.5% (—3,500)
7-8	1969[b]	2,766			
	1970**	2,466	—300	—10.8	
	1971	2,127	—339	—13.7	
	1972	1,751	—376	—17.7	
	1973	1,594	—157	—9.0	—42.4% (—1,172)
9-12	1969[b]	6,070			
	1970**	5,537	—533	—8.8	
	1971	5,093	—444	—8.0	
	1972	4,615	—478	—9.4	
	1973	4,125	—490	—10.6	—32.0% (—1,945)

*Based on Number of Caucasian Students and not Per Cent of Caucasians of the District Total.

**Pasadena Plan Implemented.

[a]The Special Education Students at Roosevelt, Home Teaching, Five Acres, Hillside Episcopal Home and E. H. Class at Lincoln are included in the total K-12, but excluded by levels—K-6, 7-8, and 9-12 and therefore will not agree.

[b]The organization for Secondary Level for 1969 was Grades 7-9 and Grades 10-12. Adjustments were made from information from the State Ethnic report by Grades, which excludes Special Education, for Grades 7-8 and 9-12 for 1969.

DEFENDANTS' EXHIBIT M.

THE NEW PASADENA PLAN

A Recommended New Approach to
Achieve Voluntary Integration
and Equality of Educational
Opportunity in the Pasadena
Unified School District

by

H. Marcheschi, Member
Board of Education
Pasadena Unified School District
Pasadena, California

Part I—The Urgent Need for Change.

October 26, 1971.

> "Nature smiles at the union of freedom and equality in our utopias. For freedom and equality are sworn and everlasting enemies and when one prevails the other dies. . . . Utopias of equality are biologically doomed, and the best that the amiable philosopher can hope for is an approximate equality of legal justice and educational opportunity."
>
> Will and Ariel Durant
> *The Lessons of History*

THE NEW PASADENA PLAN.

Part I—The Urgent Need for Change.

1.0 Foreword

In October, 1970, the Pasadena Unified School District, acting under a federal court mandate that "no school shall have a majority of a minority race" implemented a plan to desegregate its schools at all levels.

The Pasadena Plan, as the plan of implementation is called, encompasses mandatory attendance of approximately one-half of the total school population at schools other than neighborhood schools and includes the busing of minority group children into white neighborhoods as well as the busing of white children into minority group neighborhoods. A primary objective of the Pasadena Plan is the assignment of children to schools in a manner such that each school will, in general, be "racially balanced;" that is, each school will generally reflect the ethnic composition of the school district as a whole. At this writing the Plan is in the second school month of its second school year.

Part I of this presentation is intended to set forth and substantiate the compelling reasons why the Pasadena Plan is counter-productive, why it is not working now, and why it will not work in the future. By so doing, I respectfully hope to persuade the Pasadena School Board to effect certain and marked changes to the Plan, which changes will be set forth in Part II of the presentation.

2.0 Common Goals

Our community continues to experience marked and highly emotional conflict between opponents and proponents of the Pasadena Plan. It would be folly to underestimate the depth and accompanying dangers of this conflict. It would be even more foolish, however, to ignore that a consensus of agreement generally exists throughout the community on the basic objectives we are trying to achieve. *We differ not in goals but in means.* If there is hope to resolve the conflict—and I am highly optimistic there is *substantial* hope—then we must elevate our minds and spirit away from that which divides us to that on which we can agree.

Let us then start here. What *are* we trying to achieve?

2.1 *I believe we must* purge our school system completely and absolutely of any and all vestiges of discrimination. Purposeful acts resulting in forced segregation are legally and morally wrong and cannot be countenanced.

2.2 *I believe we must* use our schools to the greatest degree possible as one of many ways to achieve interracial harmony and true and lasting brotherhood between all races.

2.3 *I believe we must* provide quality education to *all* children with special and priority emphasis on raising the woefully inadequate achievement levels of many minority and low SES children who are being denied equality of educational opportunity.

2.4 *I believe we must* achieve the foregoing goals *without* infringing on individual freedom and without destroying personal liberty.

Although I have carried the glorious burden of idealism as long as I can remember, in recent years I have come to realize that in this imperfect world of imperfect men, we should *set* goals based on the world as we would like it to be and *achieve* goals based on the world as it is. The general objectives of the Pasadena Plan are noble and most worthy. It is the *means* that are impracticable, unworkable, and, in reality, paradoxically counter-productive.

The remainder of this presentation will address itself to these impracticalities, the urgent need for changes, and the legal ramifications of how we might achieve these changes.

3.0 "White Flight"

Coincident with implementation of the Pasadena Plan in October, 1970, the school district experienced a loss of 2,212 white students, a drop of 12.4%, or one out of every eight children in the entire district. In the second year of the Plan,

an *additional* 1,800 white students, or 11.5%, of the prior year white school population was lost. Put another way, approximately one out of every four white students who attended our public schools prior to implementation of the Pasadena Plan have now left the school system. White enrollment has dropped from 58.3% of the total student body in October, 1969, to approximately 50% in October, 1971.

Even more ominous is the white exodus from the elementary schools, ammounting to 1,318 white children, or 14.9%, coincident with the first year of the Plan, and an *additional* 1,025 white children, or 13.6%, in the second year of the Plan. White elementary students now comprise only 46.4% of the total district elementary enrollment compared to 54.4% in October, 1969.

While it is true that in the period 1967 through 1969, the three years preceding the Pasadena Plan, the district averaged a white exodus of approximately 5.1% per year, it is also true the exodus markedly increased two and one-half times coincident with introduction of the Pasadena Plan. It also must be noted that in the eight year period from 1958 through 1966, no white exodus of any consequence whatsoever was experienced and that the sudden surge in 1967 may have at least in part been due to the consideration and discussion of various integration plans by the school board.

Studies of other school systems which have implemented forced racial balance plans and experienced similar exodus give absolutely no hope that white exodus can be stemmed in the Pasadena School District if we continue on the present course. After reaching the present racial balance of the Pasadena School District, such other school systems have quickly "tipped" and become predominantly composed of minority children in very short time. In the Pasadena area many parents can readily avail themselves of an extraordinarily high percentage of private schools. There exists relative ease of movement into surrounding "lily-white" school districts. This argues conclusively

against stabilization without major changes in the Pasadena Plan.

The need to stop white exodus from the school district is paramount. In precarious balance hangs the future of our school system, the success of its educational programs, as well as the financial viability of our community. If we fail, those who will suffer most are the very children we are most trying to help—those who can't afford to go to private schools and those who can't afford to move to other districts.

4.0 The Effects of Forced Racial Balance on Student Achievement

In the past two years a growing body of authoritative educational research contradicts the premise that an increase in minority achievement can be directly correlated to integrated educational settings, especially when white students do not comprise the overwhelming maojrity of the integrated student population. This premise is the keystone of arguments in favor of racially balanced schools and its objective repudiation in turn should form the keystone of arguments against the theory. Hence, a major portion of my presentation is devoted to such repudiation.

Based on the racial mix presently existing in the Pasadena School District, there is strong agreement among most all authorities that racial balance will not increase minority group achievement. In fact, there is general agreement that with racial balancing at our present levels, not only will we fail to gain increased minority group achievement, but some danger of decreased white achievement may exist.

Racial and Social Class Isolation in the Schools, published in December, 1969, by the New York State Education Department, has been hailed by various authorities including Dr. James S. Coleman of Johns Hopkins University as one of the most comprehensive and authoritative studies written to date

on the subject. A copy of Chapter 4 of the study is included as Exhibit I. Particularly because the study is considered to be favorable to school integration, an examination of some of its conclusions is especially pertinent to our situation in Pasadena.

> (page 207)
> The proportion of lower status students in the school should not exceed 30 to 40 percent if the transfer of lower social status minority group students is to be educationally effective.
>
> (page 208)
> "It is probable that integration strategies *would be harmful* to the educational development of *all* student groups involved if the result of such strategies were the creation of schools in which the school population was nearly 50 percent lower status." (emphasis added)
>
> (page 209)
> "It is evident from the results of all studies reviewed that the achievement level of disadvantaged minority group students still remains substantially below that of advantaged whites, even when they attend upper status-predominantly white classes and schools."

This latter quotation is of particular interest. If under the most ideal circumstances racial mixing produces a relatively small narrowing of the achievement gap between white and minority students (Coleman estimates this to be 20 to 25 percent), then we must sorely question the efficacy of the solution. If we reject genetic deficiency theories—and I believe they must be rejected—the only rational conclusion is to seek and implement other strategies, whatever they may be, to close the gap as completely as we can. Put another way, it integrated settings *under the best of circumstances* leave a 75 to 80 percent gap between disadvantaged and advantaged group performance; racial balancing is a cruel hoax and other alternatives are an absolute necessity.

"Desegregation and Minority Group Performance," a review of all major and local studies on minority group performance in integrated settings, by Dr. Nancy H. St. John of Harvard University, published in the February, 1970, *Review of Educational Research,* reveals "rather inconclusive evidence of a relation between ethnic integration and achievement." The article is included as Exhibit II.

An analysis by Harold Kurtz, presented to the Pasadena School Board on June 15, 1971, and included herewith as Exhibit III, further delves into the improbability of increased minority achievement at racial mix percentages as they presently exist in the Pasadena School District. Utilizing data from the Coleman Report and the Civil Rights Commission Study, *Racial Isolation in the Public Schools,* the Kurtz work suggests the possibility of deteriorating white performance where classrooms are composed half of predominantly disadvantaged minority students. Mr. Kurtz' conclusions in this regard are supported by Dr. James Coleman. In testimony before the Select Committee on Equal Educational Opportunity of the U. S. Senate on April 21, 1970, Dr. Coleman stated:

> "When the school composition comes to be predominantly —that is, more than 50%—from disadvantaged backgrounds, whether white or black, then the performance of children from better backgrounds, better educational backgrounds, is reduced."

An additional study in draft form by Mr. Kurtz titled "Performance of Disadvantaged Minority Students as a Function of Their Percentage in Schools" is included as Exhibit IV. In this study Mr. Kurtz documents that significant disadvantaged group achievement gains occur only when the percentage of advantaged students is at least 70%.

Most compelling are the results of continuing study of integration in Riverside, California, outlined in *The Achievement of Pupils in Desegregated Schools,* Riverside School District, March, 1971, by Dr. Mabel C. Purl. The report is included as

Exhibit V. Primary conclusions of the report include the following:

> "Achievement of bused pupils did not increase; *the gap between bused pupils and other pupils was at least as wide in 1970 as in 1966."*

Further:

> "Low and average achieving bused pupils in the second and third grades achieved less in desegregated schools than they had in segregated schools."

The overwhelming failure of the Riverside integration plan to improve minority group achievement is confirmed by Dr. Jane Mercer, University of California, Riverside, who reports "no discernible change in minority group achievement attributable to integration."

The constraints of time preclude further documentation of what is now, at least to me, an irrefutable fact—*no increase in minority group achievement can be expected to derive from racial balancing in the Pasadena school system at our present ethnic and socio-economic mix.*

Arguments to the contrary must stand the test of objective inquiry. For example, thorough analysis of the recent *Los Angeles Times* article on alleged increases in minority achievement in the Sacramento schools has shown the reported conclusions to be grossly in error. A copy of the analysis is included as Exhibit VI. Similarly, other analyses which heretofore have shown favorable correlation between racial balancing and minority group performance (especially the landmark U. S. Commission on Civil Rights report, *Racial Isolation in the Public Schools*) are under increasing attack as being less than objective.

Contradictions in the theory that racial balancing increases minority group performance promise to grow rather than abate in the months ahead. For example, it is understood that repudiation of the theory will comprise a major element in the current

appeal by the Los Angeles School District of the Gittleson decision. Accordingly, these major challenges to the heart of the racial balance rationale must be coped with. They can no longer be ignored.

We are left with a dilemma. If forced racial balance, especially at the levels of ethnic percentages that prevail in Pasadena, will not improve minority group achievement, then what will? Regrettably, educational "experts" do not have absolute solutions, but at least there are some clues which suggest a plurality of alternatives designed to tailor education to the special needs of special children.

5.0 *Special Needs of Minority Children*

A grossly overlooked but most important conclusion of the Coleman Report is the following:

> "A pupil attendance factor which appears to have a stronger relationship to achievement than do all the 'school' factors together is the extent to which an individual feels he has some control over his own destiny. . . . The responses of pupils to questions in the survey show that minority pupils, except for Orientals, have far less conviction than whites that they can affect their own environments and futures. When they do, however, their achievement is higher than that of whites who lack that conviction."

Is this special need related to confidence and self-esteem necessarily optimized by racially balancing schools? Hardly. Many majority black schools such as Malcolm X High School in Chicago, Illinois, are showing marked improvement in achievement without racial balance. The stress here is on racial pride, ethnicity, and the exhaltation rather than the "putting down" of cultural differences.

Other clues suggest special patterns of learning ability among disadvantaged children, patterns which should be capitalized upon rather than ignored. In "Learning Patterns in the Disadvantaged," a landmark study by Susan S. Stadolsky and Gerald

Lesser in the Fall, 1967, *Harvard Education Review*, we find, contrary to current myths, different patterns of mental ability for various ethnic groups *regardless* of social class. Further suggested are special educational programs compatible to these special abilities. A copy of the article is included as Exhibit VII.

Also included as Exhibits VIII, IX and X, respectively, are "Early Childhood Intervention: The Social Science Base of Institutional Racism," by Stephen S. and Joan C. Baratz; *Harvard Educational Review*, February, 1970, "Deficit, Difference, and Bicultural Models of Afro-American Behavior," by Charles Valentine, *Harvard Educational Review*, May, 1971; and "Race and Education: A Search for Legitimacy" by Charles V. Hamilton, *Harvard Educational Review*, Fall, 1968. All of these reports underscore the need to recognize special educational needs for some minority children that markedly differ from the needs of most white children.

To those special educational needs we must add the very real and growing demand of certain sections of the Black community for greater control of their schools. At the very least, Black parents should have the right, *if they so choose*, to send their children to predominantly Black schools where the educational process is especially tailored to Black needs *as Blacks see these needs.*

If for no other reason, the failure of the Pasadena Plan to recognize and address itself to such special educational and community needs in and of itself mandates change.

6.0 *Other Problems*

Other serious problems have resulted from implementation of the Pasadena Plan. There is the monetary cost of extensive busing, estimated to be in the range of $750,000 to $1,000,000, as well as the high social cost being paid in the disruption of pre-school and post-school activities including religious instruction, scouting, etc.

One of the most perceptive delineation of problems associated with the Pasadena Plan has been prepared by the school district itself and is set forth in an application for funding under the Emergency School Assistance Program (ESAP) in August of this year. A complete listing of these problems, abstracted verbatim from the application, is included as Exhibit XI.

Particularly critical are the problems associated with the wide differences in achievement which now exist in the classroom as a result of the Pasadena Plan (Problem 1), and the resulting frustration and lack of accomplishment that is felt by disadvantaged students as a result (Problem 6). In addition, it is much more difficult and costly to implement special programs for disadvantaged students evenly dispersed throughout the school system.

Assuming unlimited funding, some of the problems delineated in the ESAP proposal could be resolved. Put another way, the Pasadena Plan, in order to be educationally successful, requires substantial increased costs in the form of lower student-pupil ratios, teacher aids, etc. It is highly doubtful whether these costs can be supported over a long term. Already, we have failed to receive but a fraction of the monies under ESAP which the school district felt absolutely essential to solve the problems associated with the Pasadena Plan.

7.0 The Legal Question

Let me make it unquestionably clear that under no circumstances do I favor "defiance" of the present Court mandate. Whether we agree or disagree with the Pasadena Plan and the decision of Judge Real, respect of law and social order is paramount to all other considerations for such is the heart and soul of our American System.

How, then, do we implement modifications of the present plan? How do we overcome the present mandate that "no school shall have a majority of a minority race"? I readily admit this restriction is not compatible to certain aspects of the New

Pasadena Plan which I will set forth in Part II of this presentation.

The first step is for a majority of the Pasadena School Board to agree on such modifications and present them to the District Court for approval. In view of the radical changes in circumstances which have occurred since the decision, and especially in view of the Supreme Court decision in the *Swann* case, I have every reason to hope the District Court would look favorably on a new plan.

Assuming the District Court did not approve the recommended changes, the Pasadena Board of Education would then be in a position to appeal the denial. Again, I am advised by highly competent legal authority there is reason to believe that higher courts would reverse such a denial.

Absent a majority decision by the Pasadena School Board to request approval for a new Plan, there is growing hope a suit brought on the merits of the case by an intervening group would at this point be heard. Further, the Board can be reconstituted by the elective process to produce a majority which would present a new Plan to the District Court for approval.

One thing is imminently clear. The Pasadena School Board can no longer hide behind the federal court mandate. It is within the power of the Pasadena School Board to seek change and it is within the power of the Pasadena School Board to achieve change.

8.0 A Time for New Decisions

The decision of the Pasadena Board of Education to implement the Pasadena Plan was a most courageous decision. While I strongly disagree with the decision, I do not for one moment question the sincerity and the integrity of those who made the decision at the time and under the circumstances the decision was made.

We are now in a position to look back and ask these questions:

8.1 Would we have implemented the Pasadena Plan in its present form if we knew that by October, 1971, one out of every four white children would have withdrawn from the school district?

8.2 Would we have implemented the Pasadena Plan in its present form if we knew that racially balanced schools at our present levels will not materially improve minority group achievement?

8.3 Would we have implemented the Pasadena Plan in its present form if we knew that it does not satisfy special educational needs of certain minority group children and is in conflict with the educational philosophy of some segments of the Black community?

8.4 Would we have implemented the Pasadena Plan in its present form if we knew that the school district would wind up shouldering the near-entire burden of the gross incremental costs associated with the Plan?

8.5 Would we have implemented the Pasadena Plan in its present form if we knew of the subsequent clarification that has occurred in the law, especially regarding the indisputable fact that racially balanced schools in and of themselves are not constitutionally required?

I respectfully suggest that the answer to at least some of these questions is a resounding NO!

The time is here for new decisions. These decisions will take the same courage, the same sincerity, and the same integrity that exemplified the decision to implement the original plan. There is no doubt in my mind that this school board will so proceed.

It is in this spirit that I look forward to presenting my recommendations for a New Pasadena Plan, a plan designed above all else to foster true integration and indeed provide all children equal opportunity to quality education.

DEFENDANTS' EXHIBIT AU.

RACIAL AND ETHNIC DISTRIBUTION OF STUDENT ENROLLMENT AND CERTIFIED EMPLOYEES IN THE PASADENA UNIFIED SCHOOL DISTRICT.

October 8, 1971.

Research Report No. 71/72-02.

Pasadena Unified School District,
Department of Planning, Research and Development.

February, 1972.

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Five Acres 11
Education Center 11
District Total 12

FOREWORD.

This report presents a survey of the racial and ethnic distribution of students and certificated employees on a school-by-school basis as of October 8, 1971. The basic data collected for the individual reports were supplied by the Department of Personnel Services, Food Services, Data Processing Services, Operations and Transportation Services, Division of Elementary Education, and the individual schools. A report for 1971-72 was completed for each school and submitted to the Department of Health, Education and Welfare[1] and the California State Department of Education.[2]

In addition to the 1970-71 and 1971-72 Racial and Ethnic Distribution of Enrollment, the full-time Professional Instructional Staff for 1971-72 is included. The definition for Full-Time Professional Instructional Staff given by the U. S. Department of Health, Education and Welfare, Office for Civil Rights, is the following:

> "Professional Instructional Staff" includes: Classroom teachers; principals; assistant principals; and those staff members who are supervisors of instruction, curriculum consultants, school librarians, non-classroom teachers (homebound, etc.), audio-visual staff, T.V. teachers, guidance counselors, and school psychologists.
>
> "Professional Instructional Staff" does *NOT* include: Chief administrative officer of the school system (superintendent); para-professional staff members (teacher's aides, student teachers, etc.); non-instructional staff members, such as attendance, business, financial, professional health personnel (doctors and nurses), school social workers, transportation, clerical, custodial, and food service personnel.

1. Fall, 1971, Elementary and Secondary School Civil Rights Survey Forms OS/CR 101—School System Summary Report and OS/CR 102—Individual School Campus Report.

2. California State Department of Education, Bureau of Intergroup Relations, Racial and Ethnic Distribution of Enrollment in Public Schools, Form IR-1 (Rev. 6-71-.

The categories listed in this report include the following personnel:

> *Teachers*—Classroom teachers, Miller-Unruh teachers, special education teachers assigned to a school, Opportunity, Resource, ESEA, teacher-specialists, project teachers, Junior High Student Advisors, etc.
>
> *Administrators*—Principals and Assistant Principals.
>
> *Other Professional Instructional Staff*—Elementary Trainees, Counselors, Librarians and Deans.
>
> *Professional Staff at Education Center*—Full-time professional instructional staff members (see definition preceeding page) who are full-time in this school system, but who are *not* full-time staff members at one particular school campus. In addition, included in this category are teachers from the Special Education Department and the Music Department.

Since the enrollment figures in Research Reports 257a, 267a, 274a, 282a, and 292 for 1966, 1967, 1968, 1969, and 1970 were reported in the six categories used then and still specified by the State Department of Education, enrollments are reported for the same six categories in this publication, Research Report 71/72-02. Also included in the Summary of this report are comparisons of student enrollments in Grades K-6, 7-12, and the District for the years 1966, 1967, 1968, 1969, 1970, and 1971.

For comparative purposes, a District Summary of Racial and Ethnic Distribution of Certificated Employees is given for the years 1966, 1967, 1968, 1969, 1970, and 1971. The summary includes Grades K-6, 7-12, and the District by Teachers, Administrators, and Other Professional Staff.

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RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT - OCTOBER 8, 1971

SUMMARY	Spanish Surname		Anglo-Caucasian		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		TOTAL
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
ALL PRIMARY & ELEMENTARY SCHOOLS K-6[a]													
Pupils - 1966	1243	7.1	10,831	62.0	4794	27.5	427	2.5	7	---	164	0.9	17,46
1967	1257	7.4	10,162	59.7	5069	29.8	416	2.4	13	0.1	103	0.6	17,0
1968	1400	8.4	9469	56.6	5274	31.6	419	2.5	18	0.1	139	0.8	16,7
1969	1497	9.2	8867	54.4	5393	33.1	376	2.3	25	0.2	136	0.8	16,29
1970	1565	10.3	7549	49.6	5521	36.3	389	2.6	28	0.2	156	1.0	15,20
1971	1658	11.8	6524	46.3	5397	38.3	366	2.6	29	0.2	108	0.8	14,08
1971													
Teachers	11	1.9	440	75.3	108	18.5	15	2.6	3	0.5	7	1.2	58
Administrators	1	3.0	28	84.9	4	12.1	0	---	0	---	0	---	3
Other Prof.[b]	0	---	3	60.0	2	40.0	0	---	0	---	0	---	
ALL JR. & SR. HIGH SCHOOLS 7-12[a]													
Pupils - 1966	797	5.6	10,034	69.9	2833	19.7	535	3.7	5	---	149	1.1	14,35
1967	890	6.2	9788	67.9	3133	21.7	533	3.7	7	0.1	63	0.4	14,41
1968	994	6.9	9431	65.5	3377	23.5	510	3.5	10	0.1	78	0.5	14,40
1969	1011	7.1	8894	62.8	3733	26.4	444	3.1	7	0.1	77	0.5	14,16
1970	1080	7.9	8003	58.2	3997	29.1	454	3.3	45	0.3	167	1.2	13,74
1971	1159	8.7	7220	54.4	4314	32.5	431	3.3	18	0.1	128	1.0	13,27
1971													
Teachers	28	4.6	492	80.2	73	11.9	17	2.8	0	---	3	0.5	61
Administrators	2	8.7	18	78.3	3	13.0	0	---	0	---	0	---	2
Other Prof.[b]	2	3.5	46	79.3	10	17.2	0	---	0	---	0	---	5
ROOSEVELT SCHOOL FOR HANDICAPPED[c]													
Pupils - 1966	8	5.1	93	58.9	50	31.6	4	2.5	0	---	3	1.9	15
1967	11	7.0	89	56.7	51	32.5	5	3.2	0	---	1	0.6	15
1968	11	7.1	89	57.0	50	32.0	6	3.9	0	---	0	---	15
1969	13	8.0	98	60.5	47	29.0	4	2.5	0	---	0	---	16
1970	21	12.4	95	56.2	46	27.2	6	3.6	0	---	1	0.6	16
1971	21	11.5	99	54.1	58	31.7	4	2.2	0	---	1	0.5	18
1971													
Teachers	1	5.6	16	88.8	1	5.6	0	---	0	---	0	---	1
Administrators	0	---	1	100.0	0	---	0	---	0	---	0	---	

[a] Roosevelt School, Home Teaching and Five Acres not included.
[b] Abbreviation for Professional Staff.
[c] Includes Home Teaching students.

NOTE: Includes employees who are employed 75% time or more.

RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT - OCTOBER 8, 1971

SUMMARY (continued)	Spanish Surname		Anglo-Caucasian		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		TOTAL
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
FIVE ACRES[a]													
Pupils - 1971	2	16.6	5	41.7	5	41.7	0	---	0	---	0	---	12
Teachers	0	---	1	100.0	0	---	0	---	0	---	0	---	1
ED. CENTER													
Pupils													
P.S. 1967[b]	10	5.3	10	5.3	167	88.4	2	1.0	0	---	0	---	189
1968[b]	17	8.1	19	9.1	171	81.8	0	---	0	---	2	1.0	209
1971[c]	39	17.5	22	9.9	157	70.7	2	0.9	1	0.5	1	0.5	222
Professional Staff at Ed. Center, 1971[d]	0	---	42	77.8	12	22.2	0	---	0	---	0	---	54
DISTRICT TOTAL													
Pupils - 1966	2048	6.4	20,958	65.6	7677	24.0	966	3.0	12	---	316	1.0	31,977
1967[b]	2168	6.8	20,049	63.1	8420	26.5	956	3.0	20	0.1	167	0.5	31,780
1968[b]	2422	7.7	19,008	60.4	8872	28.2	935	2.9	28	0.1	219	0.7	31,484
1969	2521	8.2	17,859	58.3	9173	30.0	824	2.7	32	0.1	213	0.7	30,622
1970	2666	9.2	15,647	53.7	9564	32.8	849	2.9	73	0.3	324	1.1	29,123
1971[c]	2840	10.3	13,848	50.3	9774	35.5	801	2.9	47	0.2	237	0.8	27,547
Teachers, Classroom 1971	40	3.3	949	78.0	182	15.0	32	2.6	3	0.3	10	0.8	1,216
Administrators at Schools - 1971	3	5.3	47	82.4	7	12.3	0	---	0	---	0	---	57
Other Prof. Staff at Schools - 1971	2	3.2	49	77.8	12	19.0	0	---	0	---	0	---	63
Prof. Staff at Ed. Center 1971[d]	0	---	42	77.8	12	22.2	0	---	0	---	0	---	54

[a] Students were included at Audubon Primary School for previous years.
[b] P.S. - Preschool reported for 1967 and 1968 and included in the district Total.
[c] Preschool reported to the State Department as instructed but not included in district total for this report.
[d] Professional Staff at Education Center includes certificated personnel who work directly with students but are not assigned to any one school: reading teacher specialists, psychologists, Special Education teachers, consultants, etc.

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RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT - OCTOBER 8, 1971

PRIMARY K-3	Spanish Surname		Anglo-Caucasian[1]		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		TOTAL
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
ALLENDALE													
Pupils - 1970	38	9.0	179	42.1	181	42.6	26	6.1	1	0.2	0	---	425
1971	32	8.4	157	41.1	161	42.1	29	7.6	0	---	3	0.8	382
Teachers	0		11		3		1		0		0		15
Administrators	0		1		0		0		0		0		1
AUDUBON													
Pupils - 1970	27	4.7	293	51.2	227	39.7	20	3.5	1	0.2	4	0.7	572
1971	42	7.7	261	48.0	219	40.2	19	3.5	2	0.4	1	0.2	544
Teachers	0		16		3		2		0		0		21
Administrators	1		0		0		0		0		0		1
Other Prof.	0		1		0		0		0		0		1
BURBANK													
Pupils - 1970	26	4.6	328	57.8	204	36.0	9	1.6	0	---	0	---	567
1971	35	6.8	244	47.5	227	44.1	6	1.2	1	0.2	1	0.2	514
Teachers	0		15		2		2		0		1		20
Administrators	0		1		0		0		0		0		1
DON BENITO													
Pupils - 1970	43	6.1	337	48.1	310	44.2	9	1.3	0	---	2	0.3	701
1971	34	5.3	308	47.8	291	45.2	8	1.2	0	---	3	0.5	644
Teachers	1		19		4		1		0		1		26
Administrators	0		1		0		0		0		0		1
FRANKLIN													
Pupils - 1970	48	8.2	242	41.4	265	45.4	24	4.1	1	0.2	4	0.7	584
1971	58	10.6	201	36.8	270	49.5	16	2.9	0	---	1	0.2	546
Teachers	0		18		6		0		0		0		24
Administrators	0		0		1		0		0		0		1
GARFIELD-ARROYO													
Pupils - 1970	80	30.5	122	46.6	56	21.4	3	1.1	0	---	1	0.4	262
1971	102	36.2	128	45.4	40	14.2	3	1.0	2	0.7	7	2.5	282
Teachers	1		9		3		0		0		0		13
Administrators	0		0		1		0		0		0		1

[1] The State reports use Other White to describe this category.

RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT - OCTOBER 8, 1971

PRIMARY K-3 (continued)	Spanish Surname		Anglo-Caucasian		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		TOTAL
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
HAMILTON													
Pupils - 1970	102	18.5	269	48.9	161	29.3	6	1.1	3	0.6	9	1.6	550
1971	89	15.1	251	42.5	223	37.7	12	2.0	4	0.7	12	2.0	591
Teachers	1		16		3		0		1		0		21
Administrators	0		1		0		0		0		0		1
JEFFERSON													
Pupils - 1970	238	25.3	403	42.9	249	26.5	28	3.0	7	0.7	15	1.6	940
1971	279	30.6	362	39.7	211	23.2	27	3.0	8	0.9	24	2.6	911
Teachers	1		31		6		0		0		0		38
Administrators	0		2		0		0		0		0		2
LINDA VISTA													
Pupils - 1970	2	1.1	102	58.3	57	32.6	13	7.4	0	---	1	0.6	175
1971	5	3.5	94	66.7	30	21.3	12	8.5	0	---	0	---	141
Teachers	0		6		1		0		0		0		7
Administrators	0		1		0		0		0		0		1
McKINLEY													
Pupils - 1970	50	21.6	119	51.5	48	20.8	11	4.8	1	0.4	2	0.9	231
1971	56	23.4	98	41.0	71	29.7	12	5.0	0	---	2	0.9	239
Teachers	0		8		2		0		0		0		10
Administrators	0		0		0		0		0		0		0*
NOYES													
Pupils - 1970	24	5.1	245	51.6	187	39.4	14	2.9	0	---	5	1.0	475
1971	18	4.4	201	49.2	175	42.8	14	3.4	0	---	1	0.2	409
Teachers	0		11		5		0		0		0		16
Administrators	0		1		0		0		0		0		1
SAN RAFAEL													
Pupils - 1970	14	4.4	169	53.7	119	37.8	8	2.5	0	---	5	1.6	315
1971	15	4.7	157	49.7	134	42.4	10	3.2	0	---	0	---	316
Teachers	1		14		2		2		0		0		19
Administrators	0		0		1		0		0		0		1

*Principal at Linda Vista Primary School has administrative responsibilities for McKinley Primary School.

RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT - OCTOBER 8, 1971

PRIMARY K-3 (continued)	Spanish Surname		Anglo-Caucasian		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		TOTAL
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
SIERRA MADRE													
Pupils - 1970	46	8.0	305	53.0	200	34.8	12	2.1	0	---	12	2.1	575
1971	43	9.1	243	51.6	170	36.1	12	2.6	0	---	3	0.6	471
Teachers	0		15		1		1		0		1		18
Administrators	0		1		0		0		0		0		1
SIERRA MESA													
Pupils - 1970	17	3.6	242	50.7	206	43.2	11	2.3	0	---	1	0.2	477
1971	20	4.5	222	50.4	192	43.5	6	1.4	0	---	1	0.2	441
Teachers	0		14		2		1		0		0		17
Administrators	0		1		0		0		0		0		1
WEBSTER													
Pupils - 1970	55	6.5	452	53.8	277	32.9	15	1.8	1	0.1	41	4.9	841
1971	55	7.6	415	57.1	236	32.5	17	2.3	0	---	4	0.5	727
Teachers	0		28		3		1		0		1		33
Administrators	0		2		0		0		0		0		2
WILLARD													
Pupils - 1970	121	12.9	440	46.8	358	38.0	14	1.5	0	---	8	0.8	941
1971	136	16.3	386	46.2	299	35.8	12	1.4	2	0.2	1	0.1	836
Teachers	1		31		8		0		0		0		40
Administrators	0		2		0		0		0		0		2
PRIMARY TOTAL[a]													
Pupils - 1970	931	10.8	4247	49.2	3105	36.0	223	2.6	15	0.1	110	1.3	8,631
1971	1019	12.8	3728	46.6	2949	36.9	215	2.7	19	0.2	64	0.8	7,994
Teachers	6		262		54		11		1		4		338
Administrators	1		14		3		0		0		0		18
Other Prof.	0		1		0		0		0		0		1

[a]Roosevelt School, Home Teaching and Five Acres not included.

RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT - OCTOBER 8, 1971

ELEMENTARY 4-6	Spanish Surname No.	Per Cent	Anglo-Caucasian No.	Per Cent	Negro No.	Per Cent	Chinese, Japanese, Korean No.	Per Cent	American Indian No.	Per Cent	Other Nonwhite No.	Per Cent	TOTAL No.
ALTADENA													
Pupils - 1970	57	8.3	342	50.0	265	38.7	14	2.1	2	0.3	4	0.6	684
1971	61	9.8	288	46.0	260	41.5	12	1.9	3	0.5	2	0.3	626
Teachers	0		18		5		1		0		0		24
Administrators	0		2		0		0		0		0		2
CLEVELAND													
Pupils - 1970	14	3.4	214	52.3	169	41.3	11	2.7	0	---	1	0.3	409
1971	12	3.4	173	48.6	159	44.7	10	2.8	0	---	2	0.5	356
Teachers	0		12		3		1		0		1		17
Administrators	0		1		0		0		0		0		1
EDISON													
Pupils - 1970	20	4.5	230	51.6	175	39.2	19	4.3	0	---	2	0.4	446
1971	21	5.1	195	46.9	177	42.5	18	4.3	0	---	5	1.2	416
Teachers	0		13		2		0		0		1		16
Administrators	0		1		0		0		0		0		1
FIELD													
Pupils - 1970	31	5.5	318	56.4	201	35.6	13	2.3	0	---	1	0.2	564
1971	45	8.3	300	55.1	186	34.2	12	2.2	0	---	1	0.2	544
Teachers	0		17		4		0		2		0		23
Administrators	0		1		0		0		0		0		1
HALE													
Pupils - 1970	51	9.6	310	58.3	152	28.6	13	2.3	3	0.6	3	0.6	532
1971	68	12.9	233	44.3	203	38.6	13	2.5	2	0.4	7	1.3	526
Teachers	1		15		6		0		0		0		22
Administrators	0		1		0		0		0		0		1
JACKSON													
Pupils - 1970	106	15.6	308	45.3	219	32.2	35	5.2	3	0.4	9	1.3	680
1971	95	16.4	243	42.0	199	34.4	35	6.0	1	0.2	6	1.0	579
Teachers	1		16		5		0		0		0		22
Administrators	0		1		0		0		0		0		1

RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT - OCTOBER 8, 1971

ELEMENTARY 4-6 (continued)	Spanish Surname No.	Per Cent	Anglo-Caucasian No.	Per Cent	Negro No.	Per Cent	Chinese, Japanese, Korean No.	Per Cent	American Indian No.	Per Cent	Other Nonwhite No.	Per Cent	TOTAL No.
LINCOLN													
Pupils - 1970	77	14.8	214	41.0	222	42.5	7	1.3	0	---	2	0.4	522
1971	59	14.7	157	39.0	177	43.9	5	1.2	0	---	5	1.2	403
Teachers	0		15		5		1		0		0		21
Administrators	0		1		0		0		0		0		1
Other Prof.	0		0		2		0		0		0		2
LOMA ALTA													
Pupils - 1970	27	4.3	318	50.7	268	42.8	12	1.9	0	---	2	0.3	627
1971	31	5.1	252	41.1	318	51.9	10	1.6	0	---	2	0.3	613
Teachers	1		15		6		0		0		0		22
Administrators	0		1		0		0		0		0		1
Other Prof.	0		1		0		0		0		0		1
LONGFELLOW													
Pupils - 1970	91	11.5	411	52.0	255	32.3	25	3.2	3	0.4	5	0.6	790
1971	84	11.6	357	49.4	262	36.2	16	2.2	2	0.3	2	0.3	723
Teachers	1		23		5		0		0		0		29
Administrators	0		1		1		0		0		0		2
MADISON													
Pupils - 1970	149	22.1	298	44.3	199	29.6	9	1.3	2	0.3	16	2.4	673
1971	147	22.7	266	41.2	209	32.3	12	1.9	0	---	12	1.9	646
Teachers	1		17		7		0		0		1		26
Administrators	0		2		0		0		0		0		2
WASHINGTON													
Pupils - 1970	11	1.7	339	52.2	291	44.8	8	1.2	0	---	1	0.1	650
1971	16	2.5	332	50.6	298	45.4	8	1.2	2	0.3	0	---	656
Teachers	0		17		6		1		0		0		24
Administrators	0		2		0		0		0		0		2
Other Prof.	0		1		0		0		0		0		1
ELEMENTARY[a] TOTAL													
Pupils - 1970	634	9.7	3302	50.2	2416	36.7	166	2.5	13	0.2	46	0.7	6,577
1971	639	10.5	2796	45.9	2448	40.2	151	2.5	10	0.2	44	0.7	6,088
Teachers	5		178		54		4		2		3		23
Administrators	0		14		1		0		0		0		1
Other Prof.	0		2		2		0		0		0		445

[a]Roosevelt School, Home Teaching and Five Acres not included.

RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT - OCTOBER 8, 1971

JUNIOR HIGH Grades 7 & 8	Spanish Surname No.	Spanish Surname Per Cent	Anglo-Caucasian No.	Anglo-Caucasian Per Cent	Negro No.	Negro Per Cent	Chinese, Japanese, Korean No.	Chinese, Japanese, Korean Per Cent	American Indian No.	American Indian Per Cent	Other Nonwhite No.	Other Nonwhite Per Cent	TOTAL No.
ELIOT													
Pupils - 1970	76	6.0	688	54.9	449	35.8	20	1.6	6	0.5	15	1.2	1,254
1971	67	5.9	569	50.2	466	41.1	25	2.2	2	0.2	5	0.4	1,134
Teachers	1		41		9		2		0		1		54
Administrators	1		1		0		0		0		0		2
Other Prof.	0		4		0		0		0		0		4
McKINLEY													
Pupils - 1970	136	11.3	643	53.4	344	28.6	59	4.9	6	0.5	16	1.3	1,204
1971	129	11.5	561	49.8	365	32.4	45	4.0	0	---	26	2.3	1,126
Teachers	2		40		6		2		0		1		51
Administrators	0		2		0		0		0		0		2
Other Prof.	0		3		1		0		0		0		4
WASHINGTON													
Pupils - 1970	38	4.3	460	52.5	336	38.3	26	3.0	3	0.3	14	1.6	877
1971	33	4.0	414	49.6	360	43.1	16	1.9	1	0.1	11	1.3	835
Teachers	0		28		13		1		0		0		42
Administrators	0		1		1		0		0		0		2
Other Prof.	0		3		0		0		0		0		3
WILSON													
Pupils - 1970	131	11.2	663	56.8	335	28.7	28	2.4	1	0.1	10	0.8	1,168
1971	160	14.6	567	51.8	331	30.2	25	2.3	2	0.2	10	0.9	1,095
Teachers	1		40		7		2		0		0		50
Administrators	0		2		0		0		0		0		2
Other Prof.	0		2		2		0		0		0		4
INTERMEDIATE OPPORTUNITY SCH.													
Pupils - 1970	3	10.7	12	42.9	13	46.4	0	---	0	---	0	---	28
1971	4	7.7	16	30.8	25	48.1	0	---	2	3.8	5	9.6	52
Teachers	0		2		1		0		0		0		
Administrators	0		1		0		0		0		0		
Other Prof.	0		0		0		0		0		0		
JUNIOR HIGH[a] TOTAL 7 & 8													
Pupils - 1970	384	8.5	2466	54.4	1477	32.6	133	2.9	16	0.4	55	1.2	4,53
1971	393	9.3	2127	50.1	1547	36.5	111	2.6	7	0.2	57	1.3	4,24
Teachers	4		151		36		7		0		2		20
Administrators	1		7		1		0		0		0		2
Other Prof.	0		12		3		0		0		0		15

[a]Roosevelt School and Home Teaching not included.

RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT - OCTOBER 8, 1971

SENIOR HIGH Grades 9-12	Spanish Surname No.	Spanish Surname Per Cent	Anglo-Caucasian No.	Anglo-Caucasian Per Cent	Negro No.	Negro Per Cent	Chinese, Japanese, Korean No.	Chinese, Japanese, Korean Per Cent	American Indian No.	American Indian Per Cent	Other Nonwhite No.	Other Nonwhite Per Cent	TOT
BLAIR HIGH													
Pupils - 1970	222	12.3	1044	57.9	437	24.2	77	4.3	5	0.3	19	1.0	1,8
1971	217	12.5	1027	59.4	399	23.1	73	4.2	1	0.1	13	0.7	1,7
Teachers	4		68		6		3		0		0		
Administrators	0		4		0		0		0		0		
Other Prof.	0		8		2		0		0		0		
MUIR HIGH													
Pupils - 1970	162	5.7	1420	50.2	1039	36.7	176	6.2	1	0.0	33	1.2	2,8
1971	132	5.0	1325	49.9	1019	38.3	163	6.1	1	0.0	18	0.7	2,6
Teachers	8		101		12		3		0		0		
Administrators	1		2		1		0		0		0		
Other Prof.	1		10		3		0		0		0		
PASADENA HIGH													
Pupils - 1970	306	6.9	2987	67.1	1010	22.7	68	1.5	23	0.5	59	1.3	4,4
1971	379	9.0	2506	59.3	1213	28.7	82	1.9	8	0.2	40	0.9	4,2
Teachers	10		158		19		4		0		1		
Administrators	0		3		1		0		0		0		
Other Prof.	1		15		2		0		0		0		
EVENING HIGH													
Pupils - 1971	4	8.3	42	87.5	2	4.2	0	---	0	---	0	---	
Teachers[a]	0		0		0		0		0		0		
Other Prof.	0		1		0		0		0		0		
FOOTHILL HIGH													
Pupils - 1970	6	4.7	86	67.7	34	26.8	0	---	0	---	1	0.8	
1971	34	9.3	193	53.0	134	36.8	2	0.6	1	0.3	0	---	
Teachers	2		14		0		0		0		0		
Administrators	0		2		0		0		0		0		
Other Prof.	0		0		0		0		0		0		
SENIOR HIGH[b] TOTAL 9-12													
Pupils - 1970	696	7.6	5537	60.1	2520	27.3	321	3.5	29	0.3	112	1.2	9,2
1971	766	8.5	5093	56.4	2767	30.7	320	3.5	11	0.1	71	0.8	9,0
Teachers	24		341		37		10		0		1		
Administrators	1		11		2		0		0		0		
Other Prof.	2		34		7		0		0		0		

[a]Evening High School was opened October 4 and planning and counseling took place until the regular classes were started on October 18, 1971.

[b]Roosevelt School and Home Teaching not included.

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DISTRICT SUMMARY OF
RACIAL AND ETHNIC DISTRIBUTION OF CERTIFICATED EMPLOYEES

SUMMARY	Spanish Surname		Anglo-Caucasian		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		TOTAL
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
ALL PRIMARY & ELEMENTARY SCHOOLS K-6[a]													
Teachers													
1966	7	1.1	544	84.6	78	12.1	14	2.2	0	--	0	--	643
1967	5	0.8	523	86.3	67	11.1	11	1.8	0	--	0	--	606
1968	3	0.5	465	84.1	74	13.4	11	2.0	0	--	0	--	553
1969	7	1.3	463	82.7	78	13.9	9	1.6	0	--	3	0.5	560
1970	10	1.6	498	79.6	99	15.8	13	2.1	1	0.1	5	0.8	626[b]
1971	11	1.9	440	75.3	108	18.5	15	2.6	3	0.5	7	1.2	584
Administrators													
1966	0	--	31	91.2	3	8.8	0	--	0	--	0	--	34
1967	0	--	30	91.0	3	9.0	0	--	0	--	0	--	33
1968	1	3.0	30	90.9	2	6.1	0	--	0	--	0	--	33
1969	1	3.0	30	90.9	2	6.1	0	--	0	--	0	--	33
1970	1	3.0	29	87.9	3	9.1	0	--	0	--	0	--	33
1971	1	3.0	28	84.9	4	12.1	0	--	0	--	0	--	33
Other Prof.[c]													
1966	1	5.9	15	88.2	1	5.9	0	--	0	--	0	--	17
1967	1	3.6	26	92.8	1	3.6	0	--	0	--	0	--	28
1968	2	4.0	38	76.0	10	20.0	0	--	0	--	0	--	50
1969	1	2.6	28	73.7	9	23.7	0	--	0	--	0	--	38
1970	0	--	0	--	0	--	0	--	0	--	0	--	0[b]
1971	0	--	3	60.0	2	40.0	0	--	0	--	0	--	5
ALL JR. & SR. HIGH SCHOOLS 7-12[a]													
Teachers													
1966	12	1.9	590	92.0	34	5.3	4	0.6	0	--	1	0.2	641
1967	12	1.9	579	91.6	37	5.9	4	0.6	0	--	0	--	632
1968	9	1.4	565	90.6	46	7.4	4	0.6	0	--	0	--	624
1969	11	2.0	490	89.4	38	6.9	7	1.3	0	--	2	0.4	548
1970	32	5.3	495	82.1	61	10.1	11	1.8	1	0.2	3	0.5	603
1971	28	4.6	492	80.2	73	11.9	17	2.8	0	--	3	0.5	613
Administrators													
1966	1	3.7	25	92.6	1	3.7	0	--	0	--	0	--	27
1967	1	3.7	25	92.6	1	3.7	0	--	0	--	0	--	27
1968	1	3.5	25	86.2	3	10.3	0	--	0	--	0	--	29
1969	2	7.7	21	80.8	3	11.5	0	--	0	--	0	--	26
1970	3	13.0	18	78.3	2	8.7	0	--	0	--	0	--	23
1971	2	8.7	18	78.3	3	13.0	0	--	0	--	0	--	23

For footnotes, see page 13.

DISTRICT SUMMARY OF
RACIAL AND ETHNIC DISTRIBUTION OF CERTIFICATED EMPLOYEES

SUMMARY (continued)	Surname Spanish		Anglo-Caucasian		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		TOTAL
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
Other Prof.[c]													
1966	2	3.0	57	85.1	7	10.4	1	1.5	0	--	0	--	67
1967	1	1.4	62	89.9	6	8.7	0	--	0	--	0	--	69
1968	1	1.7	47	81.1	9	15.5	1	1.7	0	--	0	--	58
1969	0	--	52	86.7	8	13.3	0	--	0	--	0	--	60
1970	2	3.2	46	73.0	15	23.8	0	--	0	--	0	--	63
1971	2	3.5	46	79.3	10	17.2	0	--	0	--	0	--	58
ROOSEVELT SCHOOL FOR HANDICAPPED													
Teachers													
1966	0	--	14	100.0	0	--	0	--	0	--	0	--	14
1967	0	--	14	100.0	0	--	0	--	0	--	0	--	14
1968	0	--	14	100.0	0	--	0	--	0	--	0	--	14
1969	0	--	15	100.0	0	--	0	--	0	--	0	--	15
1970	1	6.2	14	87.6	1	6.2	0	--	0	--	0	--	16
1971	1	5.6	16	88.8	1	5.6	0	--	0	--	0	--	18
Administrators													
1966	0	--	1	100.0	0	--	0	--	0	--	0	--	1
1967	0	--	1	100.0	0	--	0	--	0	--	0	--	1
1968	0	--	1	100.0	0	--	0	--	0	--	0	--	1
1969	0	--	1	100.0	0	--	0	--	0	--	0	--	1
1970	0	--	1	100.0	0	--	0	--	0	--	0	--	1
1971	0	--	1	100.0	0	--	0	--	0	--	0	--	1
Other Prof.													
1967	0	--	1	100.0	0	--	0	--	0	--	0	--	1
1968	0	--	1	100.0	0	--	0	--	0	--	0	--	1
FIVE ACRES													
Teacher 1971	0	--	1	100.0	0	--	0	--	0	--	0	--	1
ED. CENTER													
Professional Staff at Ed. Center[d]													
1966	1	1.0	90	91.8	7	7.2	0	--	0	--	0	--	98
1967	2	2.3	78	91.8	5	5.9	0	--	0	--	0	--	85
1968	2	2.7	60	81.1	12	16.2	0	--	0	--	0	--	74
1969	1	2.3	37	86.1	5	11.6	0	--	0	--	0	--	43
1970	1	1.7	54	90.0	5	8.3	0	--	0	--	0	--	60
1971	0	--	42	77.8	12	22.2	0	--	0	--	0	--	54

For footnotes, see page 13.

DISTRICT SUMMARY OF
RACIAL AND ETHNIC DISTRIBUTION OF CERTIFICATED EMPLOYEES

SUMMARY (continued)	Surname Spanish		Anglo-Caucasian		Negro		Chinese, Japanese, Korean		American Indian		Other Nonwhite		TOT
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
DISTRICT TOTAL													
Classroom Teachers													
1966	19	1.5	1148	88.4	112	8.6	18	1.4	0	--	1	0.1	129
1967	17	1.4	1116	89.1	104	8.3	15	1.2	0	--	0	--	125
1968	12	1.0	1044	87.7	120	10.1	15	1.2	0	--	0	--	119
1969	18	1.6	968	86.2	116	10.3	16	1.4	0	--	5	0.5	112
1970	43	3.5	1007	80.9	161	12.9	24	1.9	2	0.2	8	0.6	124
1971	40	3.3	949	78.0	182	15.0	32	2.6	3	0.3	10	0.8	121
Administrators at Schools													
1966	1	1.6	57	91.9	4	6.5	0	--	0	--	0	--	6
1967	1	1.6	56	91.8	4	6.6	0	--	0	--	0	--	6
1968	2	3.2	56	88.9	5	7.9	0	--	0	--	0	--	6
1969	3	5.0	52	86.7	5	8.3	0	--	0	--	0	--	6
1970	4	7.0	48	84.2	5	8.8	0	--	0	--	0	--	5
1971	3	5.3	47	82.4	7	12.3	0	--	0	--	0	--	5
Other Prof. Staff at Schools													
1966	3	3.6	72	85.7	8	9.5	1	1.2	0	--	0	--	8
1967	2	2.0	89	90.8	7	7.2	0	--	0	--	0	--	9
1968	3	2.8	86	78.9	19	17.4	1	0.9	0	--	0	--	10
1969	1	1.0	80	81.6	17	17.4	0	--	0	--	0	--	9
1970	2	3.2	46	73.0	15	23.8	0	--	0	--	0	--	6
1971	2	3.2	49	77.8	12	19.0	0	--	0	--	0	--	6
Prof. Staff at Ed. Center													
1966	1	1.0	90	91.8	7	7.2	0	--	0	--	0	--	9
1967	2	2.3	78	91.8	5	5.9	0	--	0	--	0	--	8
1968	2	2.7	60	81.1	12	16.2	0	--	0	--	0	--	7
1969	1	2.3	37	86.1	5	11.6	0	--	0	--	0	--	4
1970	1	1.7	54	90.0	5	8.3	0	--	0	--	0	--	6
1971	0	--	42	77.8	12	22.2	0	--	0	--	0	--	5

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For footnotes, see page 13.

FOOTNOTES FOR DISTRICT SUMMARY

[a] Roosevelt School and Five Acres, since 1971, not included. Five Acres certificated personnel has been included with Audubon School previous to 1971.

[b] The 1970 Report to HEW required that 60 Special Teachers (Miller-Unruh, Opportunity, Special Reading, etc.) be reported with *Classroom Teachers* which accounts for much of the increase in Classroom Teachers over the number in 1969. These *Special Teachers* were reported with *Other Profesional Staff* in 1969. The relatively smaller number of Classroom Teachers in 1969 was caused by two factors: cutting high school from six to five periods in 1969-70 and cutting back on the number of kindergarten teachers in 1968-69 and 1969-70.

[c] Abbreviation for Professional Staff.

[d] Professional Staff at Education Center includes certificated personnel who work directly with students but are not assigned to any one school: reading teacher specialists, psychologists, Special Education teachers, consultants, etc.

OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA.

Entered 15 May 1974.

Defendant, Pasadena City Board of Education (hereafter Board)[1] now moves the court for:

1. Relief from this Court's order of January 23, 1970, for the desegregation of Pasadena schools and the Court's order of March 10, 1970, approving the plan of desegregation submitted by defendants (hereafter Pasadena Plan);

2. Dissolution of the injunction that there be no school with a majority of any minority, under which the Board is presently operating;

3. Termination of the Court's continuing jurisdiction;

4. Alternatively, for modification of the Pasadena Plan approved March 10, 1970.

1. *Modification of the Pasadena Plan and Relief from the Order of January 23, 1970.*

In January, 1970, this Court found racial imbalance or segregation of student bodies and faculties in the Pasadena Unified School District resulting from the Board's actions and inactions in execution of an announced dedication to the neighborhood school concept of education and its opposition to forced cross-town busing. 311 F. Supp. 501 (D. C. Cal. 1970).

1. The Board at the time of the Court's January, 1970, order was composed of Mrs. La Verne La Motte, Messrs. Albert C. Lowe, D. Joseph Engholm, Bradford C. Houser and John T. Welsh.

At the time of this hearing, the Board consisted of Messrs. Henry Marcheschi (elected in 1971), Samuel Sheats (appointed in 1971), Lymon W. Newton (elected in 1973) and Drs. Henry Myers and Richard Vetterli (both elected in 1973).

While no appeal was taken from that ruling, it was, to say the very least, not received with unanimous approbation. Indeed, according to the Board's position in the proceeding at bar, this Court's ruling in 1970 is the sole and proximate cause of "white flight" from Pasadena schools and is, in addition, a barrier to achieving the excellence of educational opportunity which the Board now proposes to accomplish by means of its requested substituted plan, known as The Integrated Zone/Educational Alternatives Plan: A Proposed Modification to the "Pasadena Plan" (hereafter Alternative Plan).[2]

The posture of the Board in 1970 notwithstanding, opposition to the Pasadena Plan came early. The plan had not yet been approved when on March 2, 1970, a Motion for Leave to Intervene to oppose and appeal the judgment of this Court was filed, led by Mr. Bradford C. Houser. This motion was heard and denied by this Court on March 4, 1970. Appeal was taken of this ruling to the Court of Appeals for the Ninth Circuit, which affirmed the ruling of this Court. *Spangler* v. *Pasadena City Board of Education*, 422 F. 2d 1352, cert. denied 402 U. S. 943.

Only temporarily rebuffed, those who were determined that the Pasadena Plan would not succeed carried on their crusade. In April of 1970[3] a recall campaign against the three members of the Board who had voted against appeal of this Court's judgment[4] was commenced. With the pledge to "*STOP* FORCED BUSING", Frank C. Crowhurst, Richard W. Millar, Jr., and Henry Marcheschi[5] unsuccessfully attempted to unseat Mrs. La Motte, Mr. Lowe and Dr. Engholm in the recall election of October 13, 1970.

2. Appendix A to this opinion.

3. Five months before the Pasadena Plan was to be implemented.

4. Mrs. La Verne La Motte, Albert C. Lowe and Joseph Engholm.

5. Mr. Marcheschi is presently president of the Board of Education of the Pasadena Unified School District.

Implementation of the Pasadena Plan was accomplished with the commencement of the 1970-71 academic year in September of 1970. However, compliance was literal for only the first academic year; for, starting with the 1971-72 academic year, black student enrollment at the Loma Alta School exceeded 50 percent of the school's total enrollment. By October of the 1972-73 academic year, four schools (Edison, Franklin, Loma Alta and Sierra Mesa) had black student enrollments of more than 50 per cent of the total student body. In the 1973-74 academic year, Eliot Junior High was added to the list of non conformance; so, at the time of hearing of this matter in March of 1974, five Pasadena schools were and remain in violation of the no majority of any minority injunction of this Court's January, 1970, ruling.

The Board through the testimony of Dr. Robert Dillworth informs the Court that white enrollment relative to total enrollment in Pasadena schools has been precipitously in decline since 1970 due entirely to this Court's desegregation order. The Court rejects this conclusion relative to causation since Dr. Dillworth, admittedly, made no inquiry of anyone as to the reasons for: (1) white or black students moving from Pasadena or (2) white or black student withdrawal from the Pasadena Unified School District. He makes a statistical "guess" as to the cause of "white flight" on the basis that, statistically, it is unnecessary to ask the motivations behind the actions of people. When faced with a direct question, however, he finally admitted to the Court that he could not say "why" students, white or black, left the Pasadena Unified School District. It is of further significance that Pasadena's experience is not unique; for the trends evidenced in Pasadena closely approximate the state-wide trends in California schools, both segregated and desegregated, since 1966.

Achievement of the desegregation proposed by the Pasadena Plan provided for division of the traditional elementary school[6]

6. The Alternative Plan reaches only Kindergarten through Grade 6 schools.

into primary (K-3) and upper grade (4-6) schools for two reasons:

> 1. ". . . Students will walk to a nearby school for part of their elementary schooling and be transported with students in their neighborhoods to another school to provide ethnic balance.[7]
>
> 2. ". . . reorganization of elementary schools into primary schools (K-3) and upper schools (4-6) will provide specialization which is important to guarantee improvement in basic skills."[8]

The Alternative Plan would return to the K-6 organization of elementary education in order to "provide a sufficient number of school sites within each zone from which parents can choose the type of education most appropriate for each of their children." Howsoever denominated, the Alternative Plan is a "freedom of choice" plan that must overcome, if implemented, a large number[9] of predictably racially imbalanced schools.

The freedom of choice offered by the Alternative Plan is not new either to the law or to Pasadena. The Supreme Court in *Green* v. *County School Board of New Kent County, Virginia* (1968) 391 U. S. 430, 20 L. Ed. 2d 716, 88 S. Ct. 1689 warns us:

> ". . . in documenting a dual system a plan utilizing 'freedom of choice' is not an end in itself. As Judge Sobeloff has put it,
>
> ' "Freedom of choice" is not a sacred talisman; it is only a means to a constitutionally required end—the abolition of the system of segregation and its effects. If the means prove effective, it is acceptable, but if it fails to undo segregation, other means must be used to achieve this end. The school officials have a continuing duty to take whatever action may be necessary to create a "unitary, nonracial system." ' " *Id.* at 440.

7. Defendants' Exhibit A, page 4.

8. Defendants' Exhibit A, page 5.

9. Initially, at least eight schools—Audubon, Cleveland, Edison, Franklin, Jackson, Lincoln, Madison and Washington—would have over 60 per cent black enrollment.

The facts of *Green, supra,* may not exactly parallel what this Court found in Pasadena in 1970 or what evidently exists in Pasadena in 1974; but the message of *Green, supra,* is clear. Before any Court can stamp its imprimatur to a proposed "freedom of choice" plan of desegregation—or of continuing desegregation—it must be satisfied that freedom of choice is a viable alternative to a plan which can guarantee that no school in a once-segregated[10] school district shall be permitted to have an enrollment with a majority of any minority.[11]

Pasadena has previously failed to desegregate its schools by freedom of choice plans, *Spangler, supra,* at page 510; and efforts by other California school districts[12] laboring under freedom of choice plans have been less than spectacularly successful in achieving any meaningful desegregation of their respective schools.

What the Alternative Plan and its advocates—four of the present five Board members[13]—offer is the hope that "establishment of unique educational alternatives at each K-6 school site" and "salesmanship" will convince enough "white parents" whose

10. There appears to be, in logic, no distinction between de jure and de facto segregation for our purposes. "De jure" and "de facto" are only adjectives that give some attempted "legal" distinction to the aims of *Brown* v. *Board of Education I,* 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), and *Brown* v. *Board of Education II,* 349 U. S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955) that *"segregation"* denies equal educational opportunity. *See also, Keyes* v. *School District Number One,* 413 U. S. 189, 37 L. Ed. 2d 548, 93 S. Ct. 2636 (1975), Mr. Justice Powell, *concurring and dissenting.*

11. The Court recognizes that conceivable circumstances exist in which that mandate could not reasonably be met. Pasadena, however, does not present such a circumstance at this time.

12. In San Bernardino, California, a freedom of choice plan attracted only 15 per cent of the Negro student enrollment—no whites participated.

In Richmond, California, a freedom of choice plan conducted over a three-year period had an 11 per cent Negro student participation—no whites participated.

13. Mr. Samuel Sheats, the only black member of the Board, vigorously opposes the Alternative Plan.

children have left the Pasadena Unified School District to return *and choose* the same "educational alternatives" that black parents do in order to accomplish an integrated school system. Hope may spring eternal, but realism exposes the folly of the belief that one who left a school district because his children were forced to attend schools with Negro children would now voluntarily choose that alternative.[14]

There is yet another flaw in the Alternative Plan with its "mini-school" sales pitch. Mini-schools and the "unique educational alternatives" which they offer can be implemented under the Pasadena Plan. This Court does not intend to intimate that the quest for the best possible education to be made available to all the school children of Pasadena is not a laudable motive. It is the mandate of *Brown I, supra,* and *Brown II, supra,* and all the cases decided by the various courts of this land. But, the mandate is equally clear that school boards must do all they can to constitutionally accommodate the rights of minorities wherever they are found to conflict with the desires of the majority to do otherwise. *Alexander* v. *Holmes County Board of Education,* 396 U. S. 19, 24 L. Ed. 2d 19, 90 S. Ct. 29 (1969); *Davis* v. *Board of School Commissioners,* 402 U. S. 33, 28 L. Ed. 2d 577, 91 S. Ct. 1289 (1971); *Wright* v. *City of Emporia,* 407 U. S. 451, 33 L. Ed. 51, 92 S. Ct. 2196 (1971); *Monroe* v. *Board of Commissioners,* 391 U. S. 450, 20 L. Ed 2d 33, 88 S. Ct. 1700 (1968). The evidence has not shown that the educational opportunities presented by the Alternative Plan are equal to, or superior to, those presently available under the Pasadena Plan. If those educators—many within the Pasadena Unified School District itself—who advocate that a multiracial society requires a multiracial educational setting are to be believed, the Pasadena Plan is better suited to that objective than the Alternative Plan.[15]

14. Presumably, these are the same white parents who helped elect Mr. Marcheschi, Dr. Vetterli, Dr. Meyers and Mr. Newton in response to the campaign promise to "Stop Forced Busing."

15. Mr. Ramon C. Cortines, Superintendent of Schools of the Pasadena Unified School District, stating his opinion with candor

The Board urges the Court to abandon the Pasadena Plan because it is not succeeding educationally. The evidence offered in support of the Board's position is neither persuasive nor adequate to measure the educational benefits or inadequacies of the Pasadena Plan. Aside from the contrary evidence introduced by plaintiff-intervenor to show some educational progress, it takes little educational expertise to recognize that the Pasadena Plan has not had the cooperation from the Board that permits a realistic measurement of its educational success or failure.[16] No one can now estimate the possible results of the Pasadena Plan had it enjoyed the continued support of a Board who would act, as they profess, to "do unto others as you would have done unto you."[17] As such, the Board has not met its burden in any way sufficiently enough to have this Court rule upon this issue.

It may, perhaps, belabor the point, but, finally, the evidence shows that as much or more busing would be necessary to accomplish the ends of an integrated school system under the Alternative Plan as is currently required to achieve the same ends under the Pasadena Plan. There is, therefore, none of the fiscal advantage which was presaged by the campaign literature promising "reduced taxes—more education at less cost."

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and courage in response to a direct inquiry, testified that the Pasadena Plan, though it may need some modifications, was preferable to the Alternative Plan in achieving an educationally sound plan for an integrated school system.

16. This is not the Court's plan. The Pasadena Plan was prepared by dedicated Pasadena educators, aided by the California State Department of Education's Bureau of Intergroup Relations. That their efforts have met such vocal and active resistance may be the whole tragedy of the claims of the present Board relative to its inadequacy.

17. The present Board through the testimony of Mr. Marcheschi asks this Court for the opportunity (three or more years) to prove —by implementation—that the Administrative Plan can succeed. This, the Court would assume, is with the full support of the people of Pasadena.

II. *Dissolution of the Court's Injunction.*

Modification of the injunction of this Court of January 23, 1970, would, in effect, leave the Board to its own devices concerning the Pasadena Plan and its continued viability as a mandate for desegregation. To grant such relief would—in light of the avowed aims of four members of a five-member Board—surely be to sign the death warrant of the Pasadena Plan and its objectives. The law does not permit such an easy abdication of a Court's constitutional responsibility. *Brown* v. *Board of Education II, supra; Raney* v. *Board of Education,* 391 U. S. 430; 20 L. Ed 2d 16, 88 S. Ct. 1600 (1968); *Green* v. *County School Board, supra.* Moreover, the Board's professions of good faith do not serve to alter this result. *Alexander* v. *Holmes County Board of Education, supra.*

III. *Termination of This Court's Continuing Supervision Over the Actions of the Board.*

The reasons set forth in Parts I and II of this opinion make clear the Court's inability to accede to this final request by the Board.

Therefore, the motions of the defendants are denied.

This opinion shall, as provided in Federal Rules of Civil Procedure Rule 52(a) be deemed to be the findings of fact and conclusions of law of the Court in this matter.

May 3, 1974.

/s/ MANUEL L. REAL
United States District Judge.

Exhibit "A".

Pasadena Unified School District

December 18, 1973

THE INTEGRATED ZONE/EDUCATIONAL ALTERNATIVES PLAN A PROPOSED MODIFICATION TO THE "PASADENA PLAN".

Introduction.

Because five of the District's 32 regular schools now have a majority of a minority race and an additional six schools are within a few percentage points of joining this category, certain modifications to the Pasadena Plan are mandatory. The proposed modifications are designed to insure as much continuity with the present form of public education in Pasadena as possible. The overall effect of these modifications will be to allow parents to express more freedom in choosing the location and type of education available to each of their children and to motivate schools to compete for attendance of these children.

Modifications

(1) The first modification involves a return to the elementary system, Kindergarten through Grade 6, thereby discontinuing the current primary (K-3), elementary (4-6) organization. This change is necessary to provide a sufficient number of school sites within each zone from which parents can choose the type of education most appropriate for each of their children.

(2) The second modification involves establishment of unique educational alternatives at each K-6 school site in addition to the ongoing traditional program being taught there. Studies have shown that sufficient excess capacity exists to accomplish this easily. Each unique alternative is to be designed and placed

at a particular school site so that it acts as a "magnet" to draw students from all parts of a zone, thus encouraging integration.

The following are some unique alternatives which, in addition to instruction in the basic skills, can provide existing educational opportunities (see Exhibit A for additional information about each opportunity) for children:

1. *Alternative School Program*—Emphasizes the regular curriculum in an unstructured environment.
2. *Fundamental School Program*—Emphasizes the regular curriculum in a structured environment.
3. *A Fine and Performing Arts Program*—Will emphasize creative experiences in art, music, drama, dance, and literature.
4. *An Animal and Plant Life Program*—Will emphasize first-hand experience with actual raising of crops and animals.
5. *A Daily Newspaper-Based Program*—Will use the daily newspaper as the basis for study in reading, mathematics, social science, science, art, and other areas.
6. *A School in the Community/Career Awareness Program*—Will emphasize direct experiences with institutions and activities in the community as the basis of study.
7. *A Social Science/Science Program*—Will emphasize multi-cultural studies and outdoor, ecology-oriented studies.
8. *A Foreign Language and Cultural Program*—Will emphasize the mastery of a foreign language and the understanding of its cultural setting.
9. *An Early Childhood Education Program*—Will encompass children from four (4) to eight (8) years of age and provide multiple educational experiences that may prepare them for higher achievement in subsequent grades.

The specific, unique alternatives located at each school site will be defined prior to the beginning of the 1974-75 school year.

The existing special schools, including the Fundamental School and the Alternative School, will be maintained and expanded if necessary to act as special District-wide "magnet schools". These schools have already demonstrated their ability to promote integration on a voluntary basis. Additional magnet schools may be added such as a year-round school.

(3) The third modification involves the elimination of specific elementary school attendance boundaries. In their place four racially and ethnically balanced zones, representative of the district as a whole, will be created whose boundaries coincide with the four existing areas on which the present Pasadena Plan is designed. Exhibit B shows the zones, their boundaries, and the schools contained in each zone. Any parent who lives within a zone may choose to send his child to any school within that zone. The school district will provide all required transportation. Thus, all students who are presently enrolled in our schools would be able to continue to attend the school that they now attend if their parents so choose or they would be free to choose from any other school within their zone.

(4) On the basis of providing parents with new options as to the type of education available, the ethnic balance at some sites may be altered from what it is at present. It is, therefore, proposed that if any school's ethnic profile should deviate significantly from the District-wide ethnic profile, that school would be paired with a "sister school" with an opposite ethnic make-up. District transportation would then be provided so that students from both schools would share in special educational programs covering at least one-half a school day per week. These special educational programs will be available to students on an optional basis. Examples may include cooperative art/music programs or programs similar to those alternatives outlined previously. The special programs will be designed to encourage interest and desire to participate.

Unmodified Features of the Pasadena Plan

The four modifications presented apply to the elementary grades (K-6) only. Modifications related to junior high school and senior high school attendance areas present special problems and are now being studied by the school district administrators at the direction of the Board of Education.

Finally, all other features of the present Pasadena Plan including teacher recruitment and assignment, personnel advancement, recruitment and advancement of administrators, etc., are to remain as operating currently.

Conclusion

The proposed modifications are designed to demonstrate affirmative action on the District's part to stimulate integration within each zone without mandatory assignment of students. Further, the proposed modifications will allow parents to choose the type of education they want for each of their children.

The modifications will introduce the element of competition among the schools in each zone for pupil attendance, thereby introducing a critical new element to improve the quality of education in Pasadena schools.

Finally, the modifications are designed to stabilize the ethnic composition of the school district so that meaningful integration can take place.

Every elementary school in the district will provide for each student a program in the basic skills of reading, mathematics, and language arts as well as physical education. Additionally special programs such as, compensatory education (Title I, ESEA) mentally gifted minors (MGM), and others that are now a part of the regular school program will continue.

One of the mini-schools suggested below would be a component within the regular school.

Students would have the opportunity to attend the mini-school for instruction in subjects other than the basic skills based on their interest in that school's alternative emphasis. Students may also receive this instruction in these subjects in the regular program being taught at that school.

For example, a student living near Altadena School has a number of choices. He may attend Altadena's regular school program or its mini-school *or* he can choose the regular school program or any mini-school at any other school within that zone.

The following are brief descriptions of *some* possible mini-schools suggested to date:

1. *Fine and Performing Arts Mini-School* will provide opportunities for students to create music, dance, write and enjoy prose and poetry, as well as original plays. Students will have many opportunities to perform for the public, and to exhibit their work in the community. Extensive involvement of community resources is planned.
2. *Media/Current Events Mini-School* will use daily and weekly newspapers as the basis for study in reading, mathematics, social science, and other areas. The diversity of types of information in each newspaper makes it a good tool for instruction in many areas. Additionally, students will write, setup, and print their own newspaper on a regular basis using the techniques and equipment commonly used in the production of a daily newspaper.
3. *A Foreign Languages and Cultures Mini-School* will emphasize the mastery of a foreign language and the understanding of its cultural setting. Language specialists will give instruction for a block of time each day in French, Spanish, Russian or German, and Japanese or Chinese. In addition, time will be devoted daily to studies of the cultures and peoples represented by these languages by a teacher trained in multi-cultural studies and intergroup activities.
4. *A School in the Community/Career Awareness Mini-School* will emphasize direct experiences with institu-

tions and activities in the community as the basis of study. Trips to various places in the community, including provision for instruction as these sites will be central to this program. Students will not only learn about the existence of agencies, jobs, and institutions, but also how they work and how students can train themselves to qualify for a career in a variety of fields.
5. *An Animal and Plant Life Mini-School* will emphasize first-hand experiences with the actual raising of animals and crops. Facilities will be provided so that a wide variety of experiences in horticulture and husbandry may be presented. An appreciation of labor and the discovery of various phases of development of animal and plant life will be integral parts of this program.
6. *A Social Science/Science Mini-School* will emphasize multi-cultural studies as well as outdoor, ecology-oriented studies. A few foreign countries and cultures will be studied in depth and compared with our life here in the United States. These studies will include customs and life styles, government and sociology. Additionally, outdoor educational experiences will be provided many times during the school year with emphasis on the study of the environment and the impact of developed and undeveloped societies on their environment.
7. *An Early Childhood Education Mini-School* will provide a design with a variety of classroom structure, educational experiences in language, reading, mathematics, music, art, science, physical activity and health that will develop a readiness base and continuum of skills in primary grades. Parent participation is essential in all phases of the program to insure the child's well-being and progress.

1974 TRANSCRIPT —EXCERPTS.

Volume 1—February 25, 1974

Direct Examination of Ramon C. Cortines

[Volume 1, Page 24]

[24] The Clerk: Please state your true name and spell the last.

The Witness: Ramon C. Cortines, C-o-r-t-i-n-e-s.

Direct Examination by Mr. Paul.

Q. Where do you live, Mr. Cortines?

A. 1375 East Mountain Street, Pasadena, California.

Q. What is your occupation?

A. Educator.

Q. Do you have a position presently in the Pasadena school system?

A. Yes.

Q. What is your position?

A. Superintendent of the Pasadena Schools.

Q. How long have you occupied that position?

A. Since August of '73.

Q. Prior to becoming Superintendent of Schools in Pasadena what was your occupation?

A. Educator. I was Assistant Superintendent of Pasadena Schools, Administrative Director for long range planning, principal at two of the high schools.

Q. Simultaneously?

[25] A. Sometimes.

Q. How long have you been employed in the Pasadena School system?

A. Since August of 1968.

* * * * *

[33] Q. Do you know whether at the time the Pasadena schools opened in September 1970 any school in the district had a majority of any minority?

A. No, they did not.

Q. And in September of 1970 what was your position within the district?

A. Specifically I was Assistant Superintendent for Secondary Education and was principal at John Muir School at the time.

Q. And how are you aware of the ethnic balance within the schools when the schools opened in September 1970?

A. The then research office issued a report each October relative to the ethnic distribution and numerical count for the entire school district, school by school.

* * * * *

[35] Q. How long did the Pasadena schools maintain literal compliance with the provisions of the order requiring that there be no school with a majority of a minority?

A. One year.

Q. What happened in the second year of the Pasadena plan, that is the school year 1971-72, with respect to schools, no school having any majority of any minority?

* * * * *

A. There was one school that was not in compliance with the court order.

* * * * *

[36] Q. Which school was not in compliance in '71-72?

A. Loma Alta Elementary School.

Q. Who were the members of the Pasadena School Board at that time?

A. Mrs. LaMottee, Mr. Lowe, Mr. Sheats, Mr. Marcheschi, Mrs. Hight.

Q. Do you know whether any effort was made by the school board to bring the Loma Alta school into compliance with the court's order?

A. Yes.

Q. And what effort was made, please?

A. Plans were made to look at redistricting that particular school. I believe that the board had some involvement, a member of the school board had some involvement relative to communication with the court.

Q. What happened in the Pasadena school system with respect to the no majority of any minority provision during the school year 1972-73?

A. There were four schools that had a majority of a minority.

Q. Were those schools all at the elementary level?

A. Yes.

* * * * *

[38] Q. What happened in the school year which commenced in September 1973 with respect to the abilities or fact of compliance with the no majority of any minority provision?

A. I believe we had five schools that had a majority of a minority.

Q. And who were the members of the school board at that time?

* * * * *

A. Dr. Myers, Dr. Vetterli, Dr. Marcheschi, Mr. Newton, Mr. Sheats.

Q. When were Messrs. Myers, Vetterli and Newton elected to the board?

A. March 3rd of 1973.

* * * * *

[53] Q. Mr. Cortines, referring to the exhibits that have been received in evidence thus far and those in particular that have to do with the changes in the ethnic enrollment in the Pasadena school system, does the trend disclosed by those exhibits present any problem to the district in complying with the provisions of the court order requiring that should there—there shall be no majority in any school?

A. Yes, they do.

Q. And do you as the Superintendent of Schools [54] for Pasadena believe that the district should be relieved of that requirement of the court order?

A. Relieved of the specific that there should be no majority of any minority?

Q. Yes.

A. I do.

Q. Is there any way, in view of these forecasts, for the Pasadena School District to comply literally with that provision of the court?

A. Now or—when?

Q. Now.

A. Yes, we can comply now.

Q. And how would you do that?

A. Through redistricting.

Q. How often in your judgment would such redistricting be required?

A. It is according to the school that we are talking about in the particular area relative to stability, relative to mobility of student population or a community in transition. It could be as often as once each—each year, and it could be over a period of several years. It depends upon the area that we are talking about.

Q. But there would be, would there not, if the present trend continues schools year year that would not comply with [55] the no majority of any minority provision?

A. If we did not redistrict?

Q. If we did not redistrict and if the present trend continues?

A. Yes.

Q. Are you aware of the views of teachers and educators concerning the effect of repeated transfers of students to various schools?

A. I believe so, yes.

Q. Is there, in your judgment, a unanimity of opinion among the educators on that subject generally?

A. I think yes.

Q. And do you have an opinion as to the effect of such transfers annually upon the students within the school system?

A. My opinion?

Q. Do you have an opinion?

A. Yes.

Q. What is your opinion?

A. I believe a constant transfer of students necessitates usually a transfer of staff and a transfer obviously of parents. And because of not being able to have stable schools and make some projections on more than just one year relative to educational programs, a sequential learning process, [56] involvement of parents, staff development, that transfers have a serious effect on the building and creating of a stable school if they happen each year.

Q. Would that effect be adverse in your opinion educationally?

A. I believe it does.

* * * * *

Direct Examination of Peter Hagen.

[64] PETER F. HAGEN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

* * * * *

By Mr. Paul:

Q. What is your occupation, please, Mr. Hagen?

A. I am a psychologist.

Q. By whom are you employed?

A. I am employed by the Pasadena Unified School District.

Q. How long have you been so employed?

A. Approximately two and a half years.

Q. What is your responsibility at the district?

A. My title is Administrative Director for Planning, Research and Development.

* * * * *

[67] A. Exhibit J shows the living density patterns in 1973-74 again for black students.

* * * * *

[68] Q. In the year 1973-74 Exhibit J, again the zero at the bottom of the chart which is blank, that also shows the school attendance areas in which there are no Negro children?

A. According to our student data base that is correct.

* * * * *

[69] Q. What does Exhibit J show as to the population trend of the Negroes in Pasadena?

A. It shows that they are becoming more diffuse throughout the community, but it would depend upon what zone you were talking about for specific information.

Q. Yes.

In any event, there are in 1973-74, as disclosed by Exhibit J, ten school attendance zones in which there are [270] no blacks?

A. According to our records that is true.

* * * * *

Direct Examination of Henry Marcheschi.

* * * * *

[83] HENRY MARCHESCHI, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

* * * * *

[84] *Direct Examination by Mr. Paul.*

Q. Where do you live, Mr. Marcheschi?

A. I live at 3745 Startouch Drive in Pasadena, California.

Q. How long have you lived in Pasadena?

A. I have lived in Pasadena approximately 16 years.

Q. What is your occupation?

A. I am president of the American Telecommunications Corporation.

Q. And you are a member of the Pasadena School Board?

A. Yes, I am.

Q. What office do you presently occupy with the school board?

A. I am the president of the board.

Q. Do you have a college degree?

A. Yes, I do.

Q. From what institution did you receive your degree?

A. From the University of Illinois.

Q. In what year?

A. 1953.

Q. And the degree is what degree?

A. Bachelor of Science degree in mechanical engineering.

Q. How long have you served on the Pasadena School Board?

A. I have served on the Pasadena School Board approximately [85] two and a half years.

Q. Were you elected to office on the board?

A. Yes, I was.

Q. And when were you elected?

A. It was in the spring of 1971.

Q. When did you become president of the board?

A. I became president of the board in July of 1973.

Q. Do you have any children attending the Pasadena schools?

A. Yes, I do.

Q. How many?

A. I presently have three, my oldest boy having gone to college.

Q. And prior to going to college did he also attend the Pasadena schools?

A. Yes, he did.

Q. In what grade levels are your children now lodged?

A. I have a girl, Deborah, at Pasadena High School. I have a girl, Lisa, in junior high school. I have a son, Michael, in the elementary schools.

Q. And do any of your children ride the bus?

A. At the present time they do not.

Q. Have they in the past ridden the bus?

A. Yes, they have.

* * * * *

[90] Q. Has the school board as a result of its study and concern over the no majority of any minority provision reached any conclusion as to what steps can be taken to get into compliance with that provision of the order literally?

A. Yes.

Q. And have you reached a decision or conclusion among yourselves as to what could be done?

A. I believe so.

Q. And what is that?

A. I believe that at the present it is possible to effect compliance by massive redistricting of the school district.

* * * * *

[95] Q. Mr. Marcheschi, I show you a document entitled "Pasadena Unified School District, December 18, 1973, The Integrated Zone Educational Alternative Plan, a Proposed Modification to the Pasadena Plan."

The Clerk: Defendant's Exhibit L marked for [96] identification and placed before the witness.

(The exhibit referred to was marked Defendant's Exhibit L for identification.)

By Mr. Paul:

Q. Are you familiar with the provisions of that exhibit?

A. Yes, I am.

Q. Did you have anything to do with the formulating of the proposed modifications to the Pasadena plan that are reflected in this exhibit?

A. Yes.

Q. And what did you have to do with the proposed modifications?

A. I was primarily responsible for the conception of this particular modification approach.

Q. When did you first personally give attention to the manner in which in your judgment the Pasadena plan should be modified?

A. I began to give attention to the possible modification of the Pasadena plan very early in my tenure as a board member.

Q. I will show you a document with attachments entitled "The New Pasadena Plan, A Recommended Approach to Achieve Voluntary Integration and Equality of Educational Opportunities in the Pasadena Unified School District by H. Marcheschi, [97] Member, Board of Education, Pasadena Unified School District, October 26, 1971."

The Clerk: Defendant's Exhibit M marked for identification and placed before the witness.

(The exhibit referred to was marked Defendant's Exhibit M for identification.)

By Mr. Paul:

Q. Did you prepare Exhibit M?

A. Yes, I did.

Q. And over what period of time did you work on it?

A. The proposal was the culmination of a rather lengthy period of study in the entire area of school integration which had initially its impact on educational achievement which initiated to the best of my recollection in mid-1970.

Q. Were there any subsequent efforts of yours directed at similar modifications?

A. Yes, there was another modification which I presented to the school board at a later date, I believe it was in 1972.

Q. I will show you a document entitled "Neighborhood School Integrated Zone Plan for Grade K-6, A Proposed Plan to Restore Neighborhood Schools, Promote Voluntary Integration, Achieve Equality of Educational Opportunity and Racially Stabilize the Pasadena Unified School District, by [98] H. Marcheschi, Member of the Board of Education," dated January 9, 1973.

The Clerk: Defendant's Exhibit N marked for identification and placed before the witness.

(The exhibit referred to was marked Defendant's Exhibit N for identification.)

By Mr. Paul:

Q. Did you prepare Exhibit N, Mr. Marcheschi?

A. Yes, I did.

* * * * *

[99] Q. What did you do with the new Pasadena plan, Exhibit M, after you prepared it?

A. It was presented to the school board in three separate parts. Part 1 was presented on October 26, 1971. Part 2 and Part 3 were presented at school board meetings shortly thereafter.

Q. And what did you do with Exhibit N dated January 9, 1973 after you prepared that one?

A. That was also presented to the school board on the date noted, January 9, 1973. And I believe in both cases I move adoption of these particular modifications.

Q. Who were the members of the school board on the occasions when you presented both Exhibit M and Exhibit N?

A. Mrs. LaMotte, Mr. Lowe, Mrs. Hight, Mr. Sheats.

* * * * *

[101] Q. Turning to Exhibit L, the proposed modification of the Pasadena plan dated December 18, 1973, have you discused these modifications with the other members of the board?

A. Yes.

Q. And other than Mr. Sheats do each of the board members agree that the Pasadena plan should be modified as reflected in Exhibit L?

A. As evidenced by their affirmative vote to present this plan for modification to the court the answer to that is yes.

(Brief pause.)

Q. I will show you a copy of an affidavit dated December 19, 1973 bearing the title of "Affidavit of Henry Marcheschi in Support of Motion by Pasadena City Board of Education," and ask you if you executed that affidavit at or about the date it bears?

The Clerk: Defendant's Exhibit O marked for identification and placed before the witness.

(The exhibit referred to was marked Defendant's Exhibit O for identification.)

[102] By Mr. Paul:

Q. Directing your attention to the second page of the affidavit commencing at line 20 and I quote:

> "Further affiant believes and therefore affirms that greater racial stability and an improved integration and nondiscriminatory educational program can best be achieved through the adoption of certain modifications to the plan."

What is the basis for your statement that in your judgment the modifications proposed will provide "greater racial stability"?

A. Mr. Paul, I have to base that in part on the history as indicated by Exhibit K of the relative instability which has occurred in the school district over the past period of years which, as you are aware, has indicated a trend of decreasing Caucasian enrollment even prior to the implementation of the plan. Consequently in my opinion by the data accelerated on the Pasadena plan it is my belief that it is essential that we have to find a way to attract new Caucasian families to the school district for what we are experiencing now is no longer a phenomenon of white flight but one of white boycott, that is to say, that those families which may have desired to remove their Caucasian children [103] from the school district by either placing them in private schools or by leaving the school district and moving elsewhere. I believe that the brunt of that phenomenon is behind us and even those of us who have opposed the plan would have hoped to see some amelioration of the rate of decrease when that

phenomenon had passed us. However, that has not been the case as you see from the numbers in Exhibit K.

So I believe there is general concurrence that the phenomenon that we are now experiencing is one where we don't have the number of white families moving in to offset those who are either graduating or leaving the Pasadena area for all of the many reasons why people leave an area, not necessarily associated at all with the Pasadena plan.

When I met with the superintendent early this school year with my instructions to attempt to devise a school system with an educational concept that would conceivably provide the kind of educational attractiveness that we would start bringing Caucasian families, and for that matter all families, into the Pasadena School District, as was evidenced by the data this morning, not only have we experienced a decrease in Caucasian students but we have had for all intents and purposes no marked increase of the amount of minority students either. So it was my conclusion that we had to reconstruct the educational "selling attractiveness," if [104] you will, for want of a better term, of the Pasadena School District in such a way so that Pasadena was again the kind of school district, the kind of city that people move into because of its school system. To that extent we discussed it with the superintendent and certain members of his staff, various concepts on how we could do this. We discussed extensively trying to give the image of a private school system where parents had choices, where the excellence of education was such that not only the parents have choices but they had choices which were viable and attractive to them. Out of that particular concept therein lay the concept, at least part of the genesis of the concept, of providing schools at which distinct educational alternatives were offered, plus the freedom to choose between those alternatives which, in my opinion, introduce into our public school system a very viable force to improve education which had never existed before, that being, very simply, competition among the schools for students, because I am a strong believer that it is competition among schools which is

going to be one of the most dominant forces that iinproves our educational system not only in Pasadena but elsewhere.

So on the basis of that rationale I believed—partly on the basis of that rationale I believed that the modified plan as it was conceived would offer the kind of [105] attractions which would again attract families to our community and stabilize the ethnic composition of our school district.

Q. Now, you may have answered my further inquiry concerning the statement—additional statement contained in your affidavit that not only greater racial stability would be achieved but that the modifications proposed would also provide, and I am quoting, "an improved integrated and nondiscriminatory educational program."

Is there anything to what you have said that you would care to add on the question of the basis for your statement that the modifications that the board proposes would, in your judgment, provide an improved integrated and nondiscriminatory educational program?

A. Yes, there is.

Q. What is that, please?

A. I would like to preface what I have to say, Mr. Paul, by stating that as is evidenced by the fact my children have and will continue to attend the Pasadena public school system, the fact that I am at the moment in the process of building a new home in the Pasadena school district, I am committed to continuing to reside in the Pasadena school district and doing whatever I personally can do, so to speak, to see to it we have an integrated school system. I [106] believe in integration in the schools.

I also believe on the basis of the trends to date, comparison of our school district with other school districts in the country, it is my personal opinion that unless we modify our plan that in the years ahead we will find that we have a school district that is so predominantly minority that meaningful integration at that point in time is a hollow and meaningless phrase. I

therefore believe that in order to make integration meaningful in the Pasadena school district we have to find a way to stabilize our Caucasian population in order, very simply, that there are sufficient Caucasian students left to integrate.

And I believe sincerely that this modification, while there certainly can't begin to be any guarantees in this most complex and trying set of circumstances, that it is the best potential answer to the problem that either I or Superintendent Cortines have been able to conceive.

[109] Q. Has the board given consideration as to the manner in which students would be assigned under the proposed modifications?

A. Yes.

Q. And what is the board's plan in that regard?

A. Under the proposed modification plan the method of assignment will be as follows: For any given school the first priority for seats in that school would go to children who are in the neighborhood served by that school and the priority would also extend equally to children whose race is in the minority in that particular school.

[110] Second priority—

Q. In the minority in that school or the minority in the school from which they come?

A. The minority in the receiving school, sir.

Q. Yes.

A. Second priority would go to children that are of a race who are in the majority in the receiving schools but do not live in that particular neighborhood.

* * * * *

Cross-Examination of Henry Marcheschi.

* * * * *

Cross-Examination by Mr. Landsberg.

Q. Mr. Marcheschi, would it be fair to say that the present plan that you are proposing, Defendant's Exhibit L, is an out-

growth of the prior plans which you proposed, Defendant's Exhibits M and N?

A. With certain important changes, yes.

Mr. Landsberg: I would like to ask the clerk—

Q. Do you have Exhibit M before you?

A. Yes, I do.

* * * * *

[113] Q. On page 12 you state at the very least black parents should have the right if they so choose to send their children to predominently black schools where the educational process is especially tailored to black needs as blacks see those needs, is that correct?

[114] A. Yes.

Q. Could you explain what was behind that statement?

A. Yes. There are a number of factors behind that statement. The first factor is that there is not by any stretch of the opinion a unanimity of positions in the black community in Pasadena with respect to the Pasadena plan or compulsory busing to achieve racial balance.

I was therefore trying to reflect in this statement the opinion of a certain segment of our black community, which opinion, incidentally, was in part also reflected in my testimony before the House Judiciary Committee.

Number two, I have a very, very strong philosophical adversion toward what I consider to be an ironic paradox of our present plan. I draw this analogy. In the south blacks were at one time required to ride in the back of the bus. I think any reasonable person at this point in time would agree that that was an abominable situation. There then came to pass legislation and, more than all, I thing a change of feeling on the part of many people due to the civil rights movement where blacks then were permitted to sit anywhere they please in the bus, including the front. So is the case I believe in school desegregation in my opinion. We once had a dual school system. Brown said that no child should be excluded from any school because

of his race. They should be [115] able to go to school wherever they please. But the philosophical hangup I have with compulsory racial balance is the fact now that we are compelling black children to attend racially balanced schools whether they want to or not. There is at least evidence that some don't want to.

The analogy is that it would be the same as if we told that black person on the bus now not only can you sit anywhere you want but we are not gonna let you off the bus, you have to ride. I personally feel that compulsory attendance of black children at racially balanced schools, even though the parents of those black children do not wish their children to attend, to me is a denial of freedom every bit as onerous as that denial which caused them once not to be permitted to attend white schools.

Q. So that they should have the right to choose to send their children to a black school, is that correct?

A. I believe they should have that right.

Q. And conversely, would you say the same thing about white children?

A. I would say that white children—let me retract, back up one moment, counsel.

I believe black parents should have the right to attend—their children to attend black schools. I do not believe that they should have the right to make those schools [116] exclusively black. In other words, white children should not be denied attendance at those schools.

By the same token I believe that white parents should have the right to have their children attend neighborhood schools but they should not have the right to exclude integration of those schools by precluding black attendance.

* * * * *

Q. Now, Part 2 of the 1971 plan, which is Exhibit M, in fact contained a proposal of yours to bring about that end, is that correct?

A. To bring about which end, sir?

Q. The end of providing the freedom of choice that you were describing earlier.

A. Would you please refer again to the exhibit number.

Q. Exhibit M.

A. M as in Mary?

Q. Yes, sir.

A. Exhibit M did include a proposed modification which would have, to the best of my recollection, created racially balanced schools by then giving black children the [117] right of reassignment, if you will, at their request into predominantly black schools.

Incidentally, there is one further component to what I meant about black schools. I believe the phrase is meet the educational needs of black children as blacks see these needs." I am personally convinced after considerable investigation and considerable discussion with what I consider to be authorities throughout the country that we have yet to really come up with a viable answer or answers as to how we do indeed impact in a favorable and viable way on a minority achievement. I believe that as a matter of record that even our most trusted authorities in the area expressing frustration at our inability to do so. It was my belief under this type of curcumstance that anything we can try that is positive should be tried that even has a ghost of a chance in addressing itself to that improvement. But it was my opinion after extensive interfacing with black leaders in the black communities who were in favor of black community schools that it had sufficient potential that it should at least be tried.

• • • • •

[121] Q. Could you turn to Exhibit 1 of plaintiff intervenor, in other words, the attachment to your plan, to Part 2 of your plan, page 2.

A. Which plan, counsel?

Q. Government Exhibit—Government Exhibit 1, the last two pages, the three pages styled Exhibit 1.

A. Thank you. I have it.

Q. They are attachments, is that correct, to your plan?

A. Yes, they are.

Q. And there is a chart in that attachment. Would you explain the chart, please, on page 2 of Exhibit 1.

A. Let me review the entire exhibit, counselor, because I don't recall it exactly.

(Brief pause.)

Okay. Would you please repeat the question?

Q. Number one, what would be the optimum percentage of black students in the integrated schools?

A. I believe I don't know if there is any such optimum number overall. I believe I referred earlier to the extent there is a correlation between racially balanced classrooms and educational achievement of minority youngsters. Those who attempt to support that theory seem to agree that once you get beyond 50 percent minority enrollment those advantages [122] no longer obtain. So from an educational standpoint you would attempt, if possible, to take an assumption that those who propound that theory are correct and attempt to optimize to that end.

Q. In order to optimize to that end do I interpret your chart correctly as meaning that 1,000 black students would have to attend black schools in order to have majority white balanced schools?

A. Based on the data obtained at that time and to the best of my recollection this was based on enrollment data that existed in 1971-1972, that was the case. I think you recognize the fact that that figure would be substantially different today.

Q. It would be larger, would it not?

A. Yes, it would.

Q. That plan also provided for the creation of magnet schools, is that correct, do you recall? I refer you to page 5 of the plan.

• • • • •

[123] The Witness: The answer is yes.

* * * * *

[128] Q. Mr. Marcheschi, the first modification in Defendant's Exhibit L is to change the grade organization of the schools, could explain why that was done? Was it proposed?

A. I believe there are two reasons. The first reason is that within any given one of the four zones we wish to provide a maximum number of alternatives from which parents could choose.

* * * * *

[130] The second reason is to the extent that we believe one of the factors of some stability is reestablishment of the right to attend the closet school in one's—to one's home if one desires to do that. Then the K through 6 format makes that right a reality as well as since this approach does not obtain under a K through 3, 4 through 6 format because the school closest to your home may be 4 through 6 and your child happens to be in the second grade, for example. So I would say that those two reasons together seemed to dictate the K through 6 format. I am sure there are some others but those are the ones that come immediately to my mind.

* * * * *

Q. Mr. Marcheschi, how many types of alternative education would be offered in each zone?

A. How many types is yet to be determined. What we [131] have determined is that initial spectrum of possibility.

Q. Have you determined that an initial spectrum of possible numbers, in other words whether there be five or three, two?

A. It would seem to me that based on what I have said a few questions ago that we would want at least as many alternatives as there are schools in any given zone.

Q. So the number of alternatives would depend upon the number of schools in the zone?

A. In part. In part they would also depend upon a number of other factors. One, the success that we have on putting together meaningful alternatives. That is to say I can visualize a situation where in the entire district we might have more than six alternatives. We might have six in Zone A and maybe six in Zone B but maybe only four are common, if you follow me, so that as a school district as a whole might mean we have eight.

The other factor which I believe is far more important is that in the final analysis is the number of alternatives that we would have under the plan would not be necessarily based on an inductive approach, that is to say, we sit back and decide what is best for our school population, but indeed it would be dependent on more than anything else the response we got from the parents. If we found that a [132] great number of parents seemed to finally settle on a number of alternatives, on a small number of alternatives, we would pretty well wind up with a small number. If on the other hand we saw that the community and parents wished a greater number of alternatives in this kind of conceiving a school system, which intimately responds to the desires of parents on a competitive basis, I can readily see where we would wind up with as many alternatives within reason that the community desired.

* * * * *

[133] Q. Would all students in each school attend the alternative program?

A. Only—

Q. Under your plan.

A. Only if all students in that school opt for the alternative program. They have a choice.

* * * * *

[141] Q. The Plaintiff Intervenor Exhibit 3 has racial projections on the second page, is that correct, under one of the models?

A. That is correct.

Q. Was a racial projection done for the February 21, 1974 modeling exercise?

A. I withdraw my last answer, counselor. This is not a projection of racial composition. It is indeed an analysis of what —at this part in time what the ethnic composition is of those students living within three-quarter miles of each of these schools. Therefore to the extent that this is relevant it would apply equally to the February 8th study as it would to the February 21st study.

Q. All right. Now, the Plaintiff Intervenor Exhibit 3 shows that if all the children within three-quarters of a mile of the Cleveland school were to attend that school it would be 91.9 percent black, is that correct?

A. That is correct.

Mr. Paul: It is immaterial, your Honor.

The Court: The objection is overruled.

By Mr. Landsberg:

Q. And looking at the February 21, 1974 modeling [142] exercise, maximum capacity of the Cleveland school is 586. If all the students within three-quarters of a mile attended that school it would be 559 students attending, is that correct?

A. Sorry, counselor, you are going to have to take me through that once again.

Q. All right. Looking at the February 21, 1974 modeling exercise what is the maximum capacity stated for the Cleveland school?

A. 586.

Q. And what is the number of students in grades K through 6 within three-quarters of a mile of the Cleveland school?

A. According to the study of February 21st that is precisely the number that appears in the amount column, that is all students K through 6 within three-quarters of a mile of the school. I see that number represented as 559.

Q. If 50 children from outside that zone were to choose to attend it, of the white race, then there would not be room there for them, would there?

A. Assuming that all black students in that—

Q. That is what this exercise assumes?

A. I say assuming that all blacks students in that particular school remained in their neighborhood school.

[143] Q. Right, that is a possibility under your plan, is it not?

A. I do not consider it a reasonable possibility.

Q. But it is a possibility?

A. I assume anything is a possibility.

Q. Well, I am trying to find out what procedure would—what the board's procedure is for assignment if 50 white children and 559 black children choose to attend the Cleveland school.

A. The plan of assignment, counselor, does not attempt to comprehend an eventuality which in my opinion, and I believe in the opinion of our staff, cannot under any reasonable circumstances occur.

Q. Have you prepared any projection of the probable enrollments by race under the proposed plan of December 18, 1973?

A. There is no way that I know—the answer to that is no, because there is, number one, no way that I know of, of attempting to anticipate what will be the choices of the parents of the school district. However, there is certainly evidence before us which would strongly suggest in my opinion that the example which you cited in an attempt to show that the assignment plan had not anticipated all possibilities, I think there is evidence where we can deduce [144] that we are going to produce under such a plan significant transfers away from the closest school towards any student's home.

Q. Well, on page 3 of Defendant's Exhibit L, do you have that before you, Mr. Marcheschi, it is the December 18 plan?

A. Just a minute. I have it.

Q. Paragraph 4 on page 3, the first sentence states:

"On the basis of providing parents with new options as to the type of educational available the ethnic balance at some sites may be altered for what it is at present."

Is that your opinion?

A. Yes, it is.

Q. That is a likelihood?

A. I believe that under the proposed plan it is unlikely that we would precisely duplicate the ethnic balance that each school presently obtains.

Q. Well, you go further and say that it is therefore proposed that if any students—school's ethnic profile should deviate significantly from the districtwide ethnic profile that school would be paired with a sister school with an opposite ethnic makeup, is that correct?

A. Yes.

* * * * *

[150] Q. What is that?

A. That is the provision of educational alternatives and school provided transportation. And as I envisage, implementation of the program, every conceivable act on the part of the school district short of compulsory assignment to preclude what I consider to be the nonexistent possibility that such a school composition will result.

Q. How often would the students have the shared experience that you referred to which is described in paragraph 4 of Defendant's Exhibit L?

Mr. Paul: That calls for a conclusion.

The Court: The objection is sustained. The plan calls for a half a day a week.

By Mr. Landsberg:

Q. And it is on an optional basis, is that correct?

A. Yes, it calls for a minimum of one-half a day a week.

Q. So that it is dependent upon other children choosing to participate in the exchange program, is that right?

Mr. Paul: The question is argumentative.

The Court: The objection is sustained.

By Mr. Landsberg:

Q. Mr. Marcheschi, do you recall that in June of 1972 [151] a small part of the school system attempted to de-annex?

Mr. Paul: Objected to on the ground it is immaterial.

The Court: The objection is overruled.

The Witness: Yes, I do recall that.

By Mr. Landsberg:

Q. That was an all-white section of the schoool system, is that correct?

A. To the best of my recollection it was predominantly white. I can't say it was all white.

Q. According to the maps up here on the board it was all white.

A. No, I think the maps on the board purport to say that there were no blacks in—I am quite reasonably sure there was a fair sprinkling of Mexican-American and Spanish speaking people in that area. I do not say that is a fact, of course, it is my guess that there is.

Q. And what was the board's vote on that de-annexation request?

A. It was defeated, was it not?

A. Yes, it was.

Q. And you voted for the de-annexation, is that correct?

[152] Mr. Paul: Immaterial.

The Court: The objection is overruled.

The Witness: I do not have the minutes before me, but if you say I did I assume you are reading the minutes.

Mr. Landsberg: I would like this marked as plaintiff intervenor's exhibit next in order.

The Clerk: 4.

Mr. Paul: May we have it identified?

Mr. Landsberg: The minutes of June 27, 1972.

The Clerk: Plaintiff Intervenor's Exhibit No. 4 marked for identification and placed before the witness.

(The exhibit referred to was marked Plaintiff Intervenor's Exhibit 4 for identification.)

By Mr. Landsberg:

Q. Turning to page 17883, is it correct that "Mr. Marcheschi voted nay because he felt the parents should have the right to freedom of choice," on the motion to reject the de-annexation?

A. I am sorry, what was your question, counsel?

The Court: Does that refresh your recollection as to how you voted, Mr. Marcheschi?

The Witness: Yes, according to the minutes I voted in the negative on a four to one vote.

[153] By Mr. Landsberg:

Q. Does that accurately state the reason for the vote?

A. I do not believe this necessarily reflects the entire reason of my vote—for my vote, but certainly my feeling that the parents within that school district, within that part of the district should have the freedom to send children to the school of their choice is a philosophy which I have subscribed to constantly and is reflected in the present plan.

My recollection also recalls that we have had in that particular district perhaps more than in others an extremely heavy withdrawal of Caucasian students. It is my recollection that what I was attempting to portray in this particular case was essentially a vote of protest, a vote of protest that would say irrespective of whether we allow them to leave us or not they are leaving us anyway. And I think it was by my negative vote that I was trying to emphasize to the board, my fellow board members at that time, the futility of the compulsory aspects of our plan.

* * * * *

Cross-Examination [was continued] by Mr. Okrand.

* * * * *

[155] Mr. Okrand: Your Honor, may I have the clerk hand a copy of this statement before the house committee up to the witness?

The Court: Certainly.

By Mr. Okrand:

* * * * *

[156] Q. And you testified before that committee on May 3rd, 1972?

A. I can't tell by this record what the date was, counselor.

Q. But it was in May of '72, was it not?

A. I believe you are correct.

Q. On that page at the part where I have a paperclip mark is a statement, "Pasadena had always maintained a unitary school system, and to the extent racially imbalanced schools existed, as indeed they did, they existed primarily as a result of housing patterns." Did you so testify?

A. Yes, I did. I also recognize, counselor, that what is and what is not a unitary school system has been, as I understand it as a layman, in the process of evolution. So that what I believed back in May, that date may not necessarily be what I believed when I signed the statement.

* * * * *

[165] Mr. Okrand: May I have marked for identification as plaintiffs' next in order Part 2 of the plan and its implementation, November 9, 1971.

The Clerk: Plaintiff's Exhibit Roman numeral VIII marked for identification and placed before the witness.

(The exhibit referred to was marked Plaintiff's Exhibit VIII for identification.)

Mr. Okrand: I move Plaintiffs' VIII in evidence.

The Witness: This is already in evidence, isn't it, counsel?

Mr. Paul: I object, your Honor. It is immaterial.

The Court: For the limited purpose stated by the court Roman numeral VIII in evidence.

(The exhibit heretofore marked Plaintiff's Exhibit VIII was received in evidence.)

* * * * *

[175] Q. In connection with the alternative plan which you [176] had proposed for the district I think you on direct examination stated that there was no way of anticipating how many parents would want their children to go to what school if it were implemented, is that correct?

A. That is correct.

Q. Would it be possible to have a survey made of the parents of the school proposing the plan and asking them to indicate their interest in the plan?

* * * * *

[177] A. Yes, that would be possible but I submit it would be meaningless at this time.

Q. No effort was made to ascertain what parents would desire to do as to whether their children should go under the proposed plan, is that correct?

* * * * *

[179] A. I believe that such a poll would be possible at this point in time but inasmuch as we have yet to develop the material which would fully expound these particular alternatives, what the possibilities were, essentially have an opportunity to sell these alternatives, then it would seem to me that such a poll in this point of time would not be meaningful.

I submit that given authority to proceed by this court it would be able to in the intervening months between [180] now and the commencement of the school year be able to develop not only the materials but the necessary marketing campaign, if you will, that would be necessary to make the program work.

* * * * *

[181] Q. Under the proposed plan if a family has, for example, three children of elementary school age and each of them wants to go to a different school your plan envisages they may go and be bused for that purpose, is that correct?

A. As long as those schools are all contained within the same zone, that is correct.

Q. Under the present plan if a family has children of the same grade level to go to a—say, go to a K-3 school they go to that one school, they do not go into different K-3 schools, isn't that correct?

A. That is correct.

Q. With regard to the Fundamental School, if you know, do the children come from all over the school district?

A. I believe that is so.

Q. Not merely from a zone?

A. That is correct.

Q. So that the length of transportation would be longer in some instances than if they were going to a school within their zone?

Mr. Paul: That calls for his conclusion.

The Court: The objection is sustained.

By Mr. Okrand:

Q. Do you know whether or not the school district had any black or Mexican-American task forces as a part of their [182] program in the past years?

A. Yes, I served on the Black Task Force.

Q. What is the purpose of those task forces?

* * * * *

The Witness: The purposes of those task forces is to the best of my knowledge to provide another communicative link of the many that already obtain between the board and various identifiable segments of the community whose goals and objectives might have been peculiar to that particular group as opposed to an interest or goal which was common to the entire school district.

By Mr. Okrand:

Q. And when was the Black Task Force created?

A. I believe it was created before I joined the board so I cannot be authoritative on that respect.

Q. Was the true on the Mexican-American Task Force?

A. I believe so but I am not sure.

Q. When was the last time that the board had a Black Task Force?

* * * * *

[183] The Witness: To the best of my knowledge the Black Task Force existed in the school year '72-73, which would mean that we had a Black Task Force as late as June of 1973.

By Mr. Okrand:

Q. That is the last time, there is no Black Task Force this year?

A. There is not.

Q. When was the last time there was a Mexican-American Task Force?

A. The answer I believe is the same as the Black Task Force. My recollection, Mr. Okrand, is that the board this year did consider the reformulation of those task forces, although I was ill and during that period of time I am given to understand that the minutes show that the board did appoint a special subcommittee consisting of Dr. Meyers and Mr. Sheats to investigate the need or desirability of reconstituting those task forces. To the best of my knowledge that committee has yet to bring its recommendations to the board.

Q. That was done in October, was it not, of last year?

A. The constitution of that committee?

Q. No, its report.

A. I am not aware if the committee did bring a report.

Redirect Examination of Henry Marcheschi.

* * * * *

[184] *Redirect Examination by Mr. Paul.*

Q. May I ask the witness to deliver to the clerk the study of February 21, 1974 in connection with the assignment of students.

A. Yes.

Mr. Paul: Your Honor, I would like to have that [185] document marked in evidence as defendant's next in order.

The Court: P marked for identification.

(The exhibit referred to was marked Defendant's Exhibit P for identification.)

Mr. Paul: Your Honor will recall that it is from that document, Exhibit P, that the witness in fact testified concerning the assignment of students or the study that was made of whether students could be effectively assigned under the implementation to the Pasadena plan.

The Court: All right.

Mr. Paul: I am offering that in evidence, your Honor.

* * * * *

The Court: It is admitted subject to being stricken.

* * * * *

Examination by the Court of Henry Marcheschi.

[186] The Court: Mr. Marcheschi, you talked about educational attractiveness to Pasadena. What do you envision as the attraction to attract back white students that may have left the district? What would be the attraction that would attract them back?

The Witness: Your Honor, I do not believe that we can generalize about any given educational approach or philosophy that is going to attract people back. But one thing that I have experienced and at great length discussed not only with our superintendent but with other educators is the fact that there is a spectrum of desire on the part of parents as to what kind of education they want for their children. That is to say that some parents like a more [187] structured educational philosophy. Other parents like more open educational philosophies. Certain parents would like their children to be schooled in the three R's, primary emphasis on the three R's. Other parents may be-

lieve that even in early education that they would like their children to be exposed to more of the humanities and fine arts aspect of educational process. The point I am trying to reach, your Honor, is that I am convinced and I believe this is shared by many educators, that the direction of education is toward providing a pluralistic school system. That is to say, where it attempts to address itself to multiplicity of educational alternatives to match multiplicity of customer demands, so to speak.

I believe that many children have left our school system because they are not finding the educational answer that they seek. I therefore believe that by offering, by broadening the spectrum of alternatives that we provide, we will in effect provide the kind of goods that some of our potential and possible customers have left our store for to find elsewhere.

The Court: Well, what is the product that you are going to sell them?

The Witness: Well, we already have two products in the school district in addition to our standard school, our [188] regular schools which we already find our customers beating down the door for but we can't fit enough of them in. Even now, your Honor, in the Fundamental School and in the Alternative School there is evidence of students wanting to enter from the private sector, private schools, and we don't have the capacity to bring them in.

These two products, if you will, or one, a very open approach to education, and the other, relatively speaking, a much more rigid basic educational approach, so that as an example of two products which now exist that we already know are attractive to people who want to come back into the school district.

The Court: Let me ask you, Mr. Marcheschi, the Fundamental School, at least the first one, was established under the present plan, is that right?

The Witness: That is correct, sir.

The Court: Is there any reason why you cannot establish a second under the present plan?

The Witness: Your Honor, I know of no reason why we can't establish a second such plan—such school but it is my belief, your Honor, that rather than continue a multiplicity of alternative schools which have an effect of then taking children away from our regular schools that what we want to do is inject these alternatives into the regular [189] schools rather than landing up with a proliferation of magnet schools.

* * * * *

[191] A. Under the modified plan we have divided the school district from four zones ethnically balanced. Each zone contains five, six or seven K through 6 schools depending upon which that particular zone is.

Now, under the modified plan any child living within that zone can attend any school within that zone based on the assignment criteria that we have previously discussed.

* * * * *

[194] The Court: Mr. Marcheschi, you are telling me that you are trying to attract white students back to Pasadena.

The Witness: That is correct.

* * * * *

[198] The Witness: Your Honor, one of the features of the Pasadena plan with which even I agree is the philosophy that for at least half of their elementary school population a child would be allowed to attend a school nearest his home.

* * * * *

[200] The Court: Do you have any idea, Mr. Marcheschi, how long it would take to make a determination as to whether or not the plan which the board now suggests the court adopt would be tested?

The Witness: I'm sorry, your Honor.

The Court: For its success or failure.

The Witness: Again, your Honor, I do not mean to be argumentative, but its success and failure in what respect?

The Court: In any respect as to whether or not it is going to work, as to whether or not it is going to give us this integration that you talk about in your plan, or whether it is going to be successful educationally. How long is it going to take to test that?

The Witness: Your Honor, as I believe that one swallow does not make a spring in the case of Pasadena spring, I am basing the majority of my conclusion over a three-year implementation period. I believe, your Honor, that in my opinion it would take two to three years to judge both its efficacy with both respect to integration and to the [201] educational espects.

The Court: You were not willing to give the Pasadena plan two or three years, were you?

The Witness: Your Honor, the fact is that the Pasadena plan has had two years.

The Court: No, but you were not willing to give it two or three years. You started working on your plan as early as the next spring.

The Witness: Yes, your Honor. I think there is an important distinction, however, and that is that the Pasadena plan was not a brand new concept or occurrence on the educational scene in the United States. I believe that there was a broad history, in my opinion, in prior school districts, of prior cities where mandated racial balance had been implemented. I believe that based on my study of that history I anticipated some of the problems which the plan would create which in my opinion had become a reality.

In the case of the modified plan while I believe, your Honor, there are examples of alternatives and voucher type concepts which are bringing in exciting new elements to education, I do not believe that anyone at this point in time can say that the plan cannot produce the educational and integration benefits which I believe it will.

* * * * *

[205] The Witness: I say we've got to address ourselves where our customers—our customers are those students who have left

our school system for private schools and equally important our customers are those people who are moving into the Los Angeles community and electing to locate elsewhere than Pasadena because of our present plan.

* * * * *

[208] The Court: From your map here, Mr. Marcheschi, I take it that in terms of the alternative plan that Loma Alta, Audubon, Altadena, Franklin, Longfellow, Lincoln, Jefferson and Jackson—I'm sorry, eight schools would be in this area, eight of your elementary schools would be in the area that appears in the map which is exhibit, could you tell me what the exhibit is on the lower corner of the map, on Exhibit J, those schools would be within that area which is apparently we can call impacted with Negro neighborhoods.

The Witness: I can't imagine the correlation directly, your Honor, between the zones as they have been established in those particular maps. I do certainly agree that a number of schools would be located in the area that is predominantly black at this time.

The Court: From your own knowledge of the district, Mr. Marcheschi, which of the schools that you would anticipate would be within the area, the boundaries of which are indicated with large black public school populations?

[209] The Witness: Your Honor, I believe we have an exhibit which tells us that rather precisely.

May I have the exhibit which set forth my second proposed modification to the plan?

Yes, sir.

Your Honor, the schools that would be in predominantly black neighborhoods would be Audubon, Edison, Loma Alta, Franklin, Washington, Madison and Lincoln.

The Court: How about Cleveland?

The Witness: Yes, your Honor, certainly Cleveland.

The Court: Jackson?

The Witness: Yes, sir, I think I failed to turn on the last page here, your Honor. Let me cover those for you.

The Court: All right.

The Witness: Cleveland and Jackson, your Honor.

The Court: Let me ask you, Mr. Marcheschi, that is nine schools that at least would be identifiable as black schools. Do you think that is better than the plan even as it now stands which might have identifiable five black schools?

The Witness: Your Honor, are you assuming that those schools although they are located in predominantly black neighborhoods will have predominantly black attendance?

The Court: We are making the assumption, Mr. [210] Marcheschi, that might be a fair assumption that at least 60 percent of the people will not opt to be bused out of the area.

The Witness: Your Honor, I do not believe I have made that assumption, at least I haven't—

The Court: Can you make that assumption?

The Witness: I am in no position at this point in time, your Honor, to make that assumption.

* * * * *

[211] The Witness: Your Honor, assuming that those schools become racially identifiable, which at this point in time in my opinion is only an assumption, I do believe, your Honor, that it would be better to have those schools, nine schools racially identifiable than none. The reason I believe that way, your Honor, is because I believe if you allow the modified plan to go into effect in the long term, that is by 1980, your Honor, it is my sincere belief that we will be able to effect more integration by stablilizing the school district than if we allow the present plan to continue. If we, your Honor, grossly, negatively impact on the white flight problem by redistricting at this point in time, your Honor, I sincerely believe, and I believe I will be supported by the superintendent [212] in this respect, that redistricting at this point in time would have a further accelerating effect on white decline.

So a balance, your Honor, as I look at the school district a short five or six years from now, and I ask myself the question

under what plan will we have more integration in Pasadena, your Honor, with all the sincerity I can muster, I say that it is the modified plan.

The Court: Well, Mr. Marcheschi, let me ask you, do you have any idea, has anybody made any study or in connection with your plan did you make any study of how many white students there were available to fill in this plan so that it could be viable and so that you could have this integration that you talked about?

The Witness: Your Honor, we know how many white students are in the school district. We know how many white students are available. We don't know obviously, your Honor, how many white students we are going to be able to attract. I think the only thing that I can sincerely say is that I think the new plan has—I almost said damn, your Honor—a darned good chance of stabilizing the school district, it has a good chance, an excellent chance of creating the kind of educational program which will not only improve education in Pasadena but attract new families to the school district.

The Court: Mr. Marcheschi, has anyone made any [213] study, for instance, about how many white students there were available and in Pasadena schools in 1970 before the plan went into effect for the '69-70 year that were in private schools as opposed to what there are now?

The Witness: Your Honor, to the best of my recollection there have been a number of studies made which indicated an increase in the private school enrollment of some magnitude coincident with the implementation of the Pasadena plan. I do not know of any studies that have specifically addressed themselves to how many students can we get back assuming we make certain changes. I can't say, your Honor, that the application of private school students to both the alternative and to the fundamental schools has been heartening and given some indication that we can get some of them back.

* * * * *

VOLUME 2—FEBRUARY 26, 1974.

Examination by the Court of Henry Marcheschi.

[223] The Court: Let me ask you, Mr. Marcheschi, so we can get to the real nitty gritty.

The Witness: Yes, sir.

The Court: Is it the fact that you have to have all-white schools to ask back the white students who have now left?

The Witness: I do not believe so.

The Court: Is that the real fact?

The Witness: I do not believe so, sir.

The Court: But how do you expect to get them back if you do not do that?

The Witness: Your Honor, I believe that returning to a system which enables Caucasian families, that provides them the right to attend their neighborhood school if they so desire is a very critical and important element in reversing the actions which I have referred to as the white boycott of our school system.

I frankly believe, your Honor, and I sincerely believe that if we can attract, and this is only one component I believe in the solution, but to the extent that that component is important I believe it is. I believe that once we have these families moving back into our neighborhood, into our district, that it seems to me we at least have them here and can begin to be persuaded and can begin to apply the kind of [224] incentives that it will be necessary to apply to get them to move out of their neighborhood school.

Your Honor, I don't see any possibility under the modified plan where we would have all-white schools.

I also envision that at the very, very minimum there would be black students who would be opting to attend schools out of their neighborhood for the purpose of either the alternatives or

for the purpose of integrated education. So even under the worst of circumstances, your Honor, I can't possibly visualize all-white schools.

* * * * *

[227] The Court: And I am sure you know what the court record is as to what happened between 1964 and 1970.

Mr. Paul: I am familiar with your Honor's findings of fact which I know are conclusive at this point as to what the situation was as of 1970. But if your Honor please, at the time the court approved the Pasadena plan no one could say with any certainty what the results of implementing that plan would be. We have now presented—

The Court: Oh, yes, they do.

Mr. Paul: —to show what the results could have been, they have been disguised truths.

The Court: Oh, yes, we do. We could tell you the day that it was implemented that there would be no school in the district that would have a majority of a minority. You cannot tell me that today under this present plan.

The Witness: Your Honor, if I may, I agree with the court that if it had been the intent of the board or I as the primary conceiver of the modified plan to come before the [228] court and allege with certainty that the modified plan would result in a school district with no schools having a majority of a minority race or a school district in which there might not be any racially identifiable schools, your Honor, I agree with you that we would be asking you to buy a pig in a poke. At the risk of being presumptuous I consider myself to be too good of a salesman to come before the court and attempt to persuade it from that poor position.

* * * * *

Direct Examination of Albert Lowe.

[230] ALBERT LOWE, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

* * * * *

Direct Examination by Mr. Paul.

Q. Where do you live, Mr. Lowe?

A. 611 East Poppy Fields Drive, Altadena.

Q. What is your occupation, please?

A. Interior designer.

Q. How long have you practiced that occupation in Pasadena?

[231] A. Since 1948.

Q. You were at one point in time a member of the Pasadena School Board, were you not?

A. Yes, sir.

Q. And you are oriental, Mr. Lowe, are you not?

A. Oriental extraction, yes.

Q. Yes.

And what was the period of your service on the Pasadena School Board, please?

A. From July of 1969 to July of 1973.

Q. And during that time did you serve as president of the board?

A. Yes, sir.

Q. And during what period did you serve as president of the board?

A. July of 1970 to July of 1972.

* * * * *

Cross-Examination of Albert Lowe.

[256] *Cross-Examination by Mr. Okrand.*

* * * * *

Q. You testified on your direct examination that there were many factors which caused a lessening of white students in the Pasadena school system, the Pasadena plan being one of them. And then you said there are other factors. What are the other factors?

Mr. Paul: The question has been asked and answered, your Honor.

The Court: The objection is overruled. This is cross-examination.

The Witness: Other factors that would cause a decline in white enrollment, declining birth rate. As I recall the Pasadena loss of total student enrollment has been about equal to that of the state as a whole.

Secondly, Pasadena itself has some decline in residents due to freeway construction. Some of those residents were no doubt white.

Smog has driven some people away.

The appeal of some of the other areas for moderate priced housing of new variety, which Pasadena cannot or does [257] not offer, those are essentially the other factors.

Q. Did urban development have anything to do with it do you think?

A. I am sorry, I did not think about that. Freeways and urban development.

Q. Did relocation of businesses away from Pasadena have anything to do with that, would you think?

A. Yes, sir.

Q. Did you make any recommendations with reference to increasing the white population in the schools of Pasadena?

A. Yes, sir.

Q. What?

A. Particularly the desirability of instituting and continuing a public information program that would be much broader than would be typical of a school district, on the belief that we needed to sell our wares, as it were, and the wares being the educational

offerings that we were providing. There was—that was my bigges point that the board had direct control over. In addition to that in the community itself I attempted at least to encourage communiy groups to do various things to promote interracial understanding and harmony on the belief that that is the way to stabilize a district to build more of that kind of harmony. Those are the two particular.

Direct Examination of Peter F. Hagen, Recalled.

[262] The Court: Mr. Hagen, you have been previously sworn, you are still under oath.

PETER F. HAGEN, recalled as a witness on behalf of the defendant, having been previously duly sworn, resumed the stand and testified further as follows:

* * * * *

[267] Mr. Paul: I will ask that a map entitled "Number of White Students Enrolled in the Pasadena Unified School District in Zones 1 through 92, 1973-74" be marked for identification.

The Clerk: Marked next in order as Defendant's Exhibit X for identification.

(The exhibit referred to was marked Defendant's Exhibit X for identification.)

The Clerk: Defendant's Exhibit X marked for identification and placed before the witness.

By Mr. Paul:

Q. Exhibit X I take it was prepared at or about the same time as the other maps?

[268] A. That is correct, and is part of the series.

Q. And again reflects the 92 zones shown in the previous maps?

A. Yes.

Q. What was the purpose for which—I will withdraw that. What does Exhibit X show?

A. Exhibit X shows the density patterns of 10,469 Anglo-Caucasian students residing in the Pasadena Unified School District in 1973-74.

* * * * *

[280] Mr. Paul: This chart, "Percent of Anglo-Caucasian Students by Years," the difference in number of Anglo-Caucasian students for each successive year is shown below the curve marked as defendant's next in order.

The Clerk: Said chart marked next in order as Defendant's Exhibit AE for identification.

(The exhibit referred to was marked Defendant's Exhibit AE for identification.)

The Clerk: Defendant's Exhibit AE marked for identification and placed before the witness.

* * * * *

[281] Q. What does this chart show, please?

A. This chart was prepared to show that the Anglo-Caucasian enrollment within the Pasadena Unified School District has been declining for approximately 25 years. It reached its peak in 1948 at 90.4 percent of the entire student body. This chart shows year by year decreases until it is now as of this chart shows October 1973, 44.0 percent of the student body.

In addition this chart shows the number of—this chart shows the reduction in numbers of Anglo-Caucasian student enrollment since 1961.

* * * * *

Cross-Examination of Peter F. Hagen, Recalled.

* * * * *

[304] *Cross-Examination by Mr. Flanagan.*

Q. Mr. Hagen, before I get back into this study I would like to ask you a few questions about the maps that have been produced.

[305] Q. So those maps represent the location of all the students in the system?

A. Yes.

* * * * *

[306] A. The maps—each individual year reflects the density or the number of students in each zone in each year.

* * * * *

[362] *Cross-Examination of Ramon C. Cortines, Recalled.*

Cross-Examination by Mr. Landsberg.

Q. Mr. Cortines, you testified that you participated in drawing the Pasadena plan, which is Defendant's Exhibit A, do you recall that testimony?

A. The Pasadena plan?

Q. Yes.

A. Yes.

Q. Is it correct that at the time that you prepared the Pasadena plan you were aware that there was a trend for the enrollment of the school system to become more heavily minority?

Mr. Paul: That calls for his conclusion and no foundation laid.

The Court: The objection is overruled.

The Witness: I was aware of the statistical data that was prepared by the then research office and the superintendent shared it with his cabinet. I was aware of the data which indicated the trend.

By Mr. Landsberg:

Q. And do you recall that on your deposition taken two weeks ago you testified that in helping to devise the plan you took that trend into account?

Mr. Paul: May the witness be referred to the [363] deposition? May we also know the portion to which he is referring?

Mr. Landsberg: Before I refer to the deposition.

Q. Independent of whether you so testified, is it a fact that in drawing the Pasadena plan you took into account the information you had regarding the trend of ethnic distribution in the district?

A. Yes.

* * * * *

[365] By Mr. Landsberg:

Q. Going back to the prior question, I refer you to page 48 of your deposition which was taken on February 11, 1974.

* * * * *

[366] By Mr. Landsberg:

Q. Let me read to you—

A. I have mine in my briefcase if you would like to get them.

"Q. Well, did you ascertain that there was a question of white out-migration prior to the formulation of the Pasadena plan?

"A. Yes, we did.

"Q. And did you take those facts into account in formulating the Pasadena plan?

"A. Yes, we did.

"Q. Can you describe in which way you took them into account?

"A. Well, I think in establishing where schools would be, if the school was going to be a K-3 school and it was going to be—I guess first we took into consideration—pardon me, we took it into consideration when we established the areas relative to looking at an area that would over a period of time have some type of stability relative to the ethnic distribution.

"Secondly, we took it into consideration [367] in—and I will use the word carrying—the K-3 and 4-6 together. In essence we looked at the ethnic distribution of a particular school as it was then and what it would look like under a proposed alternative. We did that with several."

Does that accurately describe the manner in which you took the pattern of white out-migration into account?

* * * * *

Q. Did what I just read to you—is that your testimony?

A. Yes, it is.

* * * * *

[370] By Mr. Landsberg:

Q. Mr. Cortines, do you recall that prior to the implementation of the Pasadena plan the school system had experimented with various forms of free transfer and free choice?

A. I am somewhat—yes, I am acquainted with that.

Q. Do you recall an effort to use the magnet concept at Lincoln school in the 1960's?

Mr. Paul: Objected to as immaterial, 1960, your Honor.

The Court: The objection is overruled.

The Witness: Only from what I have heard I am aware of that particular plan. I was not in the district at that time.

By Mr. Landsberg:

Q. Do you know what the results of that effort were?

Mr. Paul: Objected to as it calls for his conclusion and no foundation laid.

The Court: The objection is sustained .

By Mr. Landsberg:

Q. Mr. Cortines, is it correct that last summer summer school was run on a free choice basis?

[371] A. Yes.

Q. Do you recall what the results in terms of the ethnic enrollment at the schools was?

* * * * *

The Witness: By a visual—yes, I am aware.

By Mr. Landsberg:

Q. What were those results?

A. We do not—I need to explain that answer because we do not have ethnic statistics on distribution on our summer school. We have a numerical count of how many students attended.

But I did attend, visit some of the summer schools and there

were summer school sites where some of them were mostly black and some were integrated and some were mostly white, Caucasian. There was one school that had a high percentage of Spanish surname children.

* * * * *

[372] Mr. Landsberg: Would the clerk please hand the witness Plaintiffs' Exhibit No. Roman numeral XIX.

The Clerk: Plaintiffs' Exhibits Roman numeral XIX before the witness.

By Mr. Landsberg:

Q. Would you look at page 18419. Do you see a series of questions directed to you and your answers, Mr. Cortines?

A. Yes.

Q. Do the minutes accurately set forth questions and your responses?

(Brief pause.)

[373] A. Yes.

Q. Mr. Cortines, turning now to Defendant's Exhibit L, the proposed modification, would it be possible to implement the mini-school approach under the Pasadena plan as it now operates?

Mr. Paul: It calls for his conclusion.

The Court: The objection is overruled.

The Witness: I believe that is a yes and no answer. I would be glad to explain that.

By Mr. Landsberg:

Q. Please.

A. The mini-school program is an incentive kind of program that would be housed at each of the schools in a particular zone. Under the modified plan it is a plan that is designed to have a mini-school program at each of the sites and they would be grades K-6. So in essence it would be a school within a school. That at each K-6 site there would hopefully be a regular school and then there would be a mini-school and parents would have

the opportunity of choosing between those particular schools at that site and/or they would have the opportunity of choosing another mini-school in their particular zone at another school K-6.

Now, the mini-school concept could happen but it would be in essence under the present plan, but it would be— [374] have to be a program that only involved K-3 or 4-6 because of the present Pasadena plan. It would presently because of that, because of the movement allowed, would create problems with some of the special programs that are going on within the district.

For example, Loma Alta is an elementary school at the present time under the Pasadena plan. At the present time it has in effect openings for the parents at that particular school but for those parents only. I believe that that is the concept that the modified plan is built on, only providing parents with a choice to move within a particular zone based on an interest or based on a particular need as they see it.

Q. Are there options available at present in all of the elementary schools?

A. The movement is certainly not as free under the present plan as it is suggested under this particular plan. There is a transfer policy when it improves the ethnic distribution both at the sending and receiving school and/or because of psychological reasons or health reasons students are transferred. Or after consultation with a particular parent and a school official it is felt in the best interest of the student we presently transfer. But certainly there is not the mobility that the modified plan suggests.

[375] Q. Looking at page 2 of Defendant's L, down at the bottom of the page one of the alternatives listed is an early childhood education program. Would that kind of a program fit in better under a K-3, 4-6 grade structure or a K-6 grade structure?

A. Well, in being cognizant of our district it is, I am sure you are aware, that we have two special projects at the present

time. Hamilton and Linda Vista school which are engaged in a model program in early childhood education, we are talking about expanding that particular program, but the early childhood program certainly now does not allow any four-year old into the program. A mini-school at a K-6 site in a particular area would provide some different kinds of configurations than the early childhood configuration at present.

* * * * *

[379] Q. Is it correct that under the proposed modification it is projected that the transportation costs would be higher than they are at present?

* * * * *

The Witness: I believe the statement in my deposition states that based on the information that Dr. Zeronian in a preliminary presented to the Board of Education that they would be either the same costs or slightly higher.

* * * * *

[382] Q. Mr. Cortines, under the present Pasadena plan does the school system also operate a fundamental school and an alternative school?

A. Yes, we do.

Q. When was the alternative school established?

A. Two and a half years ago.

Q. When was the fundamental school established?

A. The fundamental school was opened this past September.

Q. And the purpose of those schools is to offer educational alternatives to students in the district?

A. Is to offer two types of alternatives to students in our district, yes.

* * * * *

[386] *Cross-Examination of Ramon C. Cortines, Recalled.*

Cross-Examination by Mr. Okrand.

Q. Mr. Cortines, my notes indicate on direct examination you testified that you became the Superintendent of Schools in August of 1973. I believe it was in August of 1972, isn't that correct?

A. Yes.

* * * * *

[387] Q. Yes. Do you recall at the board meeting of July 10, 1973 that two acting assistant superintendents were appointed by the Board of Education?

A. Yes, they were.

Q. Who were those superintendents?

A. Mr. Willard Craft, Acting Assistant Superintendent for Schools and Educational Services. Mr. McHale, Acting Assistant Superintendent for Personnel and Support Services.

Q. And to whom do those assistant superintendents report?

A. To me.

[388] Q. And at that same meeting was an Acting Director of Elementary Curriculum appointed?

A. Yes.

Q. What was her or his name?

A. Anna Marie Hession.

Q. And to whom does she report?

A. Mr. Craft, Acting Assistant Superintendent for Schools and Services and to the Superintendent because she serves on the executive council, the Superintendent's.

Q. Are all these of those persons administrators in the Pasadena school system?

A. Yes, sir.

Q. In the making of those appointments were any of them filled from an eligibility list?

Mr. Paul: Objected to as immaterial.

The Court: The objection is overruled.

The Witness: I did not make these appointments so therefore I am—no, they were not to my knowledge

By Mr. Okrand:

Q. Were any of those appointments filled as a result of any examination?

Mr. Paul: Same objection.

The Court: The objection is overruled.

The Witness: Not to my knowledge.

[389] By Mr. Okrand:

Q. Did an evaluation, training and experience committee orally interview any of them?

Mr. Paul: Same objection.

The Court: The objection is overruled.

The Witness: The Board of Education appointed those three employees to the district and I am not—they may have orally interviewed them but no is to the answer if you are talking about staff personnel.

By Mr. Okrand:

Q. Were announcements for those positions distributed to school personnel in the district?

Mr. Paul: Same objection.

The Court: The objection is overruled.

The Witness: No.

By Mr. Okrand:

Q. Were announcements of those positions distributed to college or university placement officers in Southern California?

Mr. Paul: Same objection.

The Court: The objection is overruled.

The Witness: No, sir.

By Mr. Okrand:

Q. Were announcements for those positions distributed [390] to a mailing list recommended by the Department of Inter-Group Relations?

Mr. Paul: Same objection.

The Court: The objection is overruled.

The Witness: No, sir.

By Mr. Okrand:

Q. What is the Department of Inter-Group Relations?

A. Specifically we do not now have a Department of Inter-Group Relations because of different funding, it is through consolidated—it is under consolidated funding. Mrs. Linda Goss has responsibility, and therefore staff members specifically assigned for inter-group services in the district, and Mr. Craft is the Acting Assistant Superintendent and has several personnel in the old inter-group office under another organizational arrangement assigned for inter-group services.

Q. Were announcements for those positions we mentioned attributed to a mailing list recommended by any of the organizations of the district which took over the functions of the Department of Inter-Group Relations?

A. No, sir.

* * * * *

[391] Q. Were announcements of those positions sent to officers of professional organizations?

A. No.

Mr. Paul: May I have a continuing objection to this line of questioning?

[392] The Court: Certainly.

By Mr. Okrand:

Q. Were those appointments approved by you as Superintendent?

A. No, they were not.

Q. Are any of those persons members of minority races?

A. No, they are not.

Q. They are all three Caucasians, are they not?

A. Yes, they are.

* * * * *

Q. Do you recall, Mr. Cortines, that at the meeting of the board of July 31, 1973, there was an appointment made of an acting principal of the Fundamental School and of an acting principal of the Wilson Junior High School?

[393] A. Yes.

Q. And who were those persons?

A. I made those recommendations to the Board of Education. I recommended Mrs. Louise Coover as acting principal for Wilson Junior High School and Dr. Michael Kellner as principal at the Fundamental School.

Q. And are those persons administrators within the Pasadena school system?

A. Yes, they are.

Q. Were either of those positions filled from an eligibility list?

A. No, they were not. They were filled according to district policy.

Q. But they were not filled from an eligibility list, is that correct?

A. That is correct.

Q. Were they filled as a result of examination?

A. No, they were not.

Q. Did an evaluation, training and experience committee orally interview either of them for those positions?

A. The Superintendent did.

Q. My question, Mr. Cortines, was whether there was an evaluation, training and experience committee that interviewed them.

[394] A. Not a committee per se.

Q. Were announcements for those positions distributed to school personnel in the district?

A. No.

Q. Were announcements for those positions distributed to college or university placement offices—

Mr. Paul: Your Honor, we still stipulate that his answers will be the same to this line of questions as to those just asked.

The Court: You accept that stipulation, Mr. Okrand?

Mr. Okrand: Yes, sir.

The Court: All right.

By Mr. Okrand:

Q. And are either of the persons mentioned persons of minority races?

A. No.

Q. They are both Caucasians?

Mr. Paul: That is one of the questions—

Mr. Okrand: Well, I am sorry.

Mr. Paul: —we stipulated.

Mr. Okrand: All right.

I ask to have marked for identification pages 18182 through 18183 and attached statement which is a part of those minutes of Samuel Sheats, dated July 31, 1973 as plaintiffs' [395] next in order.

The Court: Roman XXI.

The Clerk: Plaintiffs' Exhibit Roman numeral XXI marked for identification and placed before the witness.

(The exhibit referred to was marked Plaintiffs' Exhibit XXI for identification.)

(Brief pause.)

By Mr. Okrand:

Q. Did you as Superintendent of the Pasadena School District recommend to t : board the proposed modification plan which has been presented to the court?

Mr. Paul: Immaterial.

The Court: The objection is overruled.

By Mr. Okrand:

Q. I think it is Exhibit L, Mr. Cortines.

A. No, I did not.

Q. As Superintendent of the schools do you recommend the proposed plan in preference to the current plan?

A. I think you are talking about a board policy issue. The Board of Education has established that this is the plan, the majority of the Board of Education, that they desire for the Pasadena Unified School District. It is incumbent then upon the administrative staff of that district to carry out the board policy. [396] I have said publicly that this policy—I mean this plan adopted by the board if approved by the court that I would work to make it successful in the Pasadena Unified School District. It is a matter of board policy, as I see it and interpret it.

Q. My question, Mr. Cortines, is whether you as Superintendent believe the plan to be preferable to the current plan.

Mr. Paul: I think it is immaterial, your Honor, and I object to it on that ground.

The Court: The objection is overruled.

I hate to put you in that spot, Mr. Cortines, but we've got to do it.

(Brief pause.)

The Witness: I believe that the present plan since its inception and implementation—since its implementation has improved and that through the staff effort they have—we have been able together to iron out some of the problems that faced the school district in implementing a completely new plan.

I am cognizant of some of the give-ins under the Pasadena plan, some of its strengths and some of its weaknesses. I believe the plan needs to be modified, the Pasadena plan.

I believe there needs to be some relief from a [397] majority of a minority in any school.

I also believe that the modified plan is educationally sound and provides educational opportunities that are fine and some that are outstanding.

As I have said, I guess it is time, it is a matter of board policy and I feel very strongly about the board regardless of who they are, when they set policy carrying it out. If I had to make my decision, if I were the only one involved I would continue the Pasadena plan with modifications.

* * * * *

VOLUME 3—FEBRUARY 28, 1974.

Direct Examination of David J. Armor.

[Volume 3, Page 405]

[405] DAVID J. ARMOR, called as a witness on behalf of of the defendant, being first duly sworn, testified as follows:

* * * * *

[406] *Direct Examination.*

By Mr. Lane:

Q. What is your address, Dr. Armor?

A. 22041 Pacific Coast Highway, Malibu, California.

Q. Where are you presently employed?

A. The Rand Corporation.

Q. In what capacity are you employed by the Rand Corporation?

A. Senior social scientist.

* * * * *

[408] Q. Dr. Armor, did you conduct a study on academic achievement of students at the Pasadena schools between 1969 and 1973?

A. Yes, I did.

Q. Did that study investigate changes in the student achievement scores during that time period?

A. Yes.

[409] Q. Did the study also compare the achievement of black students with white students throughout that period?

A. Yes. Grades 1 through 11 with the exception of grade 10, which there is no testing administered to.

Q. As I understand it, Dr. Armor, there are two types of testing in this area, one is known as cross-sectional and the

other is known as longitudinal. Would you please define for us the first, what is cross-sectional in your opinion?

A. Well, a cross-sectional study basically examines a group of persons or group of students at one point in time. While it may trace that cohort or group at certain times, the comparisons are generally with different persons.

Q. Could you define for us then longitudinal.

A. Longitudinal study, the way I am using that term, means a study which follows a group of persons or students, in this case over time, the same group over time, to follow their changes.

Q. And in what area did you conduct your study, Doctor?

A. Mine was a longitudinal study.

Q Why did you choose longitudinal in this case?

A. Longitudinal study is required if one is going to make any inferences or conclusions about changes of individuals over time as a result of some particular program.

Q. What did you use to formulate your conclusions?

[410] A. I used statistics compiled by the Pasadena school system concerning test scores from the period 1969 to 1972 or '73 in some cases.

Q. And what material did you receive from the research department of the Pasadena schools upon which you relied?

A. I received from computer printouts which presented the basic data, mean standard deviations and the like for the different panels—longitudinal panels that I followed. These panels I should say are the same panels that are presented in the report by Mr. Hagen.

Q. That is the report which I believe is designated Exhibit AC in this action which is a document entitled "Analysis of Student Achievement Test Scores Between 1969 and 1973 in the Pasadena Unified School District"?

A. That is correct.

Q. So I understand it correctly, Dr. Armor, you used Mr. Hagen's analysis and the basic data underlying the graphs and information provided in his analysis, is that correct?

A. Well, I used the definition of panels from that report. But the Hagen report—but then I used the basic computer printouts which I understand he relied on as well for his report to get the actual numbers that I am going to present.

[411] Q. And did you rely on any additional material other than that provided by the Pasadena School District?

A. Yes. I relied on some test booklets prepared by the publisher of the test that provides national norm information.

* * * * *

Q. Dr. Armor, could you explain to us upon what basis you conducted the longitudinal study with regard to scores or achievements of the students in the Pasadena School District?

A. I relied on the results of testing that is conducted by the Pasadena school system using the cooperative primary reading test and the comprehensive test of basic skills that produces scores for reading achievement and scores for arithmetic or mathematics achievement. These are standardized tests that not only Pasadena but the State of California relies upon to assess achievement in pubilc schools.

Q. And did you compare that information, black students [412] to white students, during the time period I have indicated?

A. Yes.

Q. Is your conclusion based upon that analysis?

A. That is correct.

Q. Could you tell us, please, what conclusion you reached concerning the academic achievement of black and white students that started in grade 1 in 1969?

* * * * *

The Witness: My conclusions for those students in the longitudinal panel entering grade 1 in 1969 and '70, the year prior to the desegregation plan, is there has been no improvement of scores of black students either in comparison to the white students in the Pasadena schools or in comparison to national norms.

* * * * *

[416] Q. Dr. Armor, referring now to students who started grade 4 in 1969, what conclusion, based on your long studies, did you reach concerning the academic achievement as you have described it between black and white students?

A. My conclusion is that there has been no significant change in the reading or the mathematics achievement of black students either in comparison to white students in the Pasadena schools or in comparison to the national norm.

* * * * *

[418] Q. Dr. Armor, referring now to students that started grade 8 in 1969, what conclusion, based on your longitudinal studies, did you reach concerning the academic achievement of those black and white students?

* * * * *

The Witness: My conclusions are that there has been no significant changes in the reading or mathematic achievements for black students during the period from grade 1 to grade 11 either in comparison to white students in Pasadena or in comparison to the national norm.

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Cross-Examination of David J. Armor.

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[432] *Cross-Examination by Mr. Landsberg.*

[434] Q. What would it take for the black student—the gap between the black achievement and the white achievement scores to narrow over the years?

A. The one standard deviation difference that we see on these charts are extremely consistent with national studies of ethnic differences. It is approximately one standard deviation. If it was that narrow, and let's say became equal, that means that given the fact that gross occurs—most gross occurs in the first ten years of schooling and very little occurs after that, it means that approximately 1/10th of a standard deviation a year would have to be gained by the black students to close the gap.

Q. But you mean that the black students would have to be learning faster than the white students, is that correct?

A. That is correct.

* * * * *

[441] By Mr. Okrand:

Q. Were you present at the meeting on February 19, 1974 of school principals at which Dr. Vetterli was also present, this was just this last week?

A. Two weeks, yes, on goals. Yes, I was. I introduced him.

Q. At that meeting did Dr. Vetterli explain to the principals who were assembled the division of labor that had been marked out for the members of the Board of Education?

The Witness: Yes, he did.

* * * * *

[442] Q. What did he explain?

* * * * *

The Witness: Dr. Vetterli explained to the administrators of the district the roles and responsibilities of the individual board members, Mr. Marcheschi, Dr. Myers and Mr. Newton and himself.

By Mr. Okrand:

Q. And what did he say those obligations were?

A. He especially said that Mr. Marcheschi had responsibility for the suit. He said that he had responsibility for the administrative—he had administrative responsibilities relative to reorganization and direction of the district.

That Dr. Myers had responsbility for the fundamental school and other items.

Mr. Newton had responsibility and interests relative to career education.

Q. What did Dr. Vetterli say was the responsibility of Mr. Sheats?

* * * * *

The Witness: Mr. Sheats was not included in the role [443] in responsibilities.

* * * * *

Redirect Examination of Ramon C. Cortines, Recalled.

[445] *Redirect Examination by Mr. Paul.*

* * * * *

[449] [Q.] In the course of your cross examination you testified, as I recall, that you have, and I believe I am quoting what you said, preferred the Pasadena plan with modifications to the alternative plan which has been proposed by the school board in this case, is that correct?

A. That is correct.

* * * * *

[454] [A.] One of the things that I believe has been successful in the district since I have been there has been many of the alternative programs. Alternative schools as well as alternative programs at the individual schools, elementary, junior high, primarily elementary, junior and senior high schools. We talked about some of the successful models that we had at various schools in keeping and attracting students to our district.

And specifically I discussed the idea of a school within a school, the mini-school concept as it is referred to in the integrated or modified plan.

* * * * *

Examination by the Court of Ramon C. Cortines, Recalled.

* * * * *

[549] The Court: Mr. Cortines, I think you told us the other day that you as an educator thought that because we were a multi-racial society that a multi-racial kind of setting for education was the best in your opinion, is that right?

The Witness: That is true.

The Court: Is that because you are preparing children to live in the multi-racial society on a daily basis?

The Witness: I believe so.

The Court: Would it be your opinion that this multi-racial sort of setting can be provided by some kind of a busing situation in which sister schools were exchanged for a half a day?

The Witness: I do not believe that particular—it is my opinion that that particular aspect of the plan does not provide the kind of interchange among the different ethnic groups that I believe is worthwhile. I think the plan says a minimum of a half a day.

I also am aware that it is an optional basis. I think that that is a step in the right direction but I feel it should be more in my opinion.

The Court: How much more? In other words, when do you arrive at the kind of multi-racial setting that will [550] prepare an individual for living in a multi-racial society?

The Witness: I think that, and I am not avoiding the question, I think that that specific though refers to specific kinds of activities that might not necessarily educationally happen on a daily basis, such as art, music, some kind of an enrichment kind of experience, those don't necessarily happen each day. And I think that is what aspect the modified plan is referring to.

The Court: Can you make any prediction as an educator to what day of the week a student gets the benefit of a multi-racial setting for his education?

The Witness: No, sir.

The Court: Or what the time of day?

The Witness: No, sir.

The Court: Is that an experience that is necessarily limited to a classroom, a multi-racial setting experience?

The Witness: That is certainly primary but other kinds of activities such as on the playground and things like that, lunchtime.

The Court: Let me ask you, Mr. Cortines, you said you had or that the alternative plan provided educational opportunities,

some of which were fine and some of which were outstanding. Do you have a copy of that? That is Exhibit L.

The Clerk: Defendant's Exhibit L placed before the [551] witness.

The Court: I take it that Exhibit A are the educational opportunities that are presented by the alternative plan.

The Witness: Yes. I would want to clarify that these are suggestions. In involving the step in further developing and sophisticating some of these we might find at various schools that there would be completely different ideas based on what they felt was important for the children that would be at their particular school.

I also think that there would have to be some parent input as we began to develop these kinds of programs so that they indeed have the scope of being an incentive, in essence, what the community wanted in a mini-school program.

* * * * *

[554] The Court: Do you have the present ability with teachers and equipment and locations for providing a school in the community career awareness mini-school?

The Witness: We are presently involved in the planning for a major emphasis in a career education, career awareness and exploratory career experiences and career [555] education for the next school year. So we are presently involved in planning for that already regardless of what happens.

The Court: Do you have the teachers and the equipment and the plans to provide an animal and plant life mini-school presently?

The Witness: No, it is under consideration relative to an outdoor education kind of program and sites, but we don't actually have—we don't actually have the sites at this time.

The Court: Do you have presently the teacher capacity and the equipment and the plan to provide a social science-science mini-school?

The Witness: We have some expertise and it would take some modification of classrooms, additional equipment and

some in-service training in this because I would feel that it would need to be more than a surface kind of exposure but an in depth with a hands on kind of social science-science experience.

The Court: And do you have the teachers and the equipment and the plans to provide an early childhood education mini-school?

The Witness: We presentiy have two of the model programs within the state at two of our primary schools which [556] I believe based on our experience this year that next year we could implement a very sophisticated program.

* * * * *

[559] The Court: As I understand it, then, Mr. Cortines, you are presently implementing No. 4 and No. 7, is that right?

The Witness: I think that we have aspects of all nine of these and many more as this particular paper will talk about throughout the system. There is not a consistency and that has created some problems because some schools have said how come we don't have this program or that program.

I will give you an example. Loma Alta, since we have talked about it a great deal, Loma Alta last year had three programs going where parents could choose. It was very interesting because we found a very high morale among parents, among students and among the staff at that particular school. And because parents could choose a nongraded program, fourth, fifth, sixth graders all in the same class, or they could choose a team teaching, or they could choose self-contained classroom programs with some various aspects of a pullout program for some reading, both for accelerated and remediation. Now, there is a particular situation where choices were provided but there was a concern by some other people that they did not have those opportunities and were not allowed to come to that school because there was not room to handle them or it did not improve the ethnic distribution [560] of that school.

The Court: Let me ask you, Mr. Cortines, are there any of these programs you say you have some aspect of all of them,

are there any of these programs that cannot be implemented in the present plan, the Pasadena plan?

The Witness: They can but in a different way because the chronological age grouping is different.

The Court: Well, what I am asking you is whether or not the offerings of the kind of education that are offered by alternatives 1 through 7 cannot be accomplished in the Pasadena School District under the present Pasadena plan?

The Witness: I think I would have to repeat my answer. The answer is yes, but it would not span a chronological age that is suggested by this particular plan which leads to different kinds of educational experiences because of the different chronological ages and experiences they bring with them.

The Court: Do you think that the implementation of this kind of education necessarily depends upon the approval of the alternate plan?

The Witness: Not necessarily.

The Court: So that this isn't a sine qua non of the alternative plan, is it?

[561] The Witness: No, but it is an important aspect as an incentive program to keep and attract people to the district under this plan.

The Court: Under this plan?

The Witness: That is right.

The Court: And the same kind of experiences would attract people to the district under the present Pasadena plan, would it not?

The Witness: I believe so, that is what the exhibit that you just shared with me was all about, to let people know what was actually happening in those schools.

* * * * *

Direct Examination of Jane R. Mercer.

[Volume 3, Pages 588]

[558] JANE R. MERCER, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

The Clerk: Please state your true name and spell your last name.

The Witness: Jane R. Mercer, M-e-r-c-e-r.

Direct Examination by Mr. Tonken.

Q. Dr. Mercer, what is your home address, please?

A. 7750 Bolero Drive, Riverside.

Q. Where are you presently employed?

A. I am employed at the University of California Riverside as an associate professor in the sociology department there. My specialities are the sociology of education, research methodology and survey research.

Q. Do you teach a course in all those specialities?

A. Yes, I do.

Q. At both the undergraduate and graduate levels?

A. Yes, I do.

Q. Do you have some background in statistical analysis, [589] Dr. Mercer?

A. Yes, I have the usual courses that are taken to get the Ph.D. degree in sociology.

Mr. Tonken: Your Honor, I would like to have marked for identification a document dated February 1973 and entitled "Biography, Jane R. Mercer."

The Clerk: Marked next in order Plaintiff Intervenor's Exhibit No. 20 for identification.

Plaintiff Intervenor's Exhibit No. 20 before the witness.

(The exhibit referred to was marked Plaintiff Intervenor's Exhibit 20 for identification.)

By Mr. Tonken:

Q. Dr. Mercer, is the document which has been placed before you by the clerk an accurate summary of your educational and professional credentials?

A. Yes, it is.

Mr. Tonken: Your Honor, I move the admission of the document into evidence as plaintiff intervenor's next in order.

Mr. Lane: No objection, your Honor.

The Court: 20 in evidence.

(The exhibit heretofore marked Plaintiff Intervenor's Exhibit 20 was received in evidence.)

[590] Mr. Tonken: At this time, your Honor, based upon the information contained in Plaintiff Intervenor's No. 20 I should like to offer Dr. Mercer to the court as an expert in the field of sociology, of education and social research methodology.

The Court: Let me see the exhibit.

(The exhibit was passed to the court.)

(Pause.)

The Court: You may proceed in your questioning on that basis.

By Mr. Tonken:

Q. Dr. Mercer, have you in the past several years conducted studies of school desegregation in the state of California?

A. Yes, I have.

Q. Would you briefly describe the nature of those studies, please.

A. There have been two major efforts, they began in 1965 when the city of Riverside desegregated their schools. A group of us at the university developed a collegium to study and monitor the progress of the Riverside School District as it desegregated its schools.

About four years later we—I expanded the study, the others left, to include all of the major desegregating [591] school districts on the West Coast so that our present work includes about

15 school districts all of which are in the process of desegregating.

We have collected data in those school districts on approximately 40,000 elementary school children, about 8,000 secondary school children.

In addition to this program which we call evaluating integrated elementary and secondary education, we have also studied a sample of school districts in the state of California collecting data on those school districts both by questionnaires and by reading the files of the State Department of Education, Bureau of Inter-Group Relations relating to those districts.

Q. Have your studies of those districts in California included studies of the Pasadena Unified School Districts?

A. Yes. Pasadena has been included.

Q. Would you describe the nature of your study of Pasadena over the past several years, please?

A. Well, it has been included in all of the studies. Pasadena is part of the sample of school districts that we studied statewide from the Bureau of Inter-Group Relations files.

It has also been one of the districts which has been part of our program of evaluating integrated education [592] on a school by school basis for two years. We collected data in Pasadena in the spring of 1972 and once again in the spring of 1973.

Mr. Tonken: Your Honor, I would like to have marked for identification a document, the first page of which is entitled "Mean Number and Percent Black Students in 91 California Unified School Districts With Different Historical Patterns Toward School Desegregation, 1966 to 1971."

The Clerk: Marked next in order as Plaintiff Intervenor's Exhibit No. 21 for identification.

Plaintiff Intervenor's Exhibit No. 21 before the witness.

(The exhibit referred to was marked Plaintiff Intervenor's Exhibit 21 for identification.)

Mr. Tonken: Your Hinor, I have—

Mr. Lane: May we have a minute, your Honor, to locate the document?

The Court: All right.

(Brief pause.)

Mr. Tonken: Your Honor, I have an extra copy of the document. Would the court care to have it?

The Court: Yes, I would like to see it.

(The document was passed to the court.)

[593] By Mr. Tonken:

Q. Dr. Mercer, did you prepare Plaintiff Intervenor's No. 21?

A. Yes, I and my staff at the center on campus.

Q. For what purpose was it prepared?

A. Really for two purposes. As a part of our federal funding we were contracted to do a study of desegregating California school districts to determine whether there were significant changes in the population characteristics of those districts following desegregation.

In addition, some of these tables were prepared and presented as part of testimony in the Indianapolis desegregation case.

Q. Dr. Mercer, would you please explain to the court the categories listed there on the left side of each of the first three pages of the exhibit.

Mr. Lane: Your Honor, we are going to object to this line of questioning on the grounds of relevancy and also foundation.

The Court: What is the relevancy, counsel?

Mr. Lane: Well, your Honor—

The Court: I am not asking you, I am asking him what the relevancy is.

Mr. Tonken: Your Honor, among the school districts [594] that comprise the categories which are outlined in the documents is Pasadena. It is the Government's intent to demonstrate that there has been, as indicated by these tables and charts, there has been thoughout the state of California in a variety of school

districts, both like and unlike Pasadena in terms of demographics, a trend in the direction of loss of percent Anglo-Caucasian population so that Pasadena when compared with the rest of California is not by any means unique in this regard.

The Court: For that limited purpose the objection is overruled.

By Mr. Tonken:

Q. Again, Dr. Mercer, would you explain to the court the categories listed there on the left side of each of the first three pages of the exhibit, please?

A. All right. The 91 school districts in this chart are all of those school districts in the state of California that are unified, that had at least 10 percent total minority population and had at least 2,500 total enrollment in 1971.

From information in the Bureau of Inter-Group Relations files we classified these 91 school districts into the seven categories you see on this chart according to the extent to which they had desegregated their schools during the period 1966 through 1971.

[595] The Bureau of Inter-Group Relations conducts an ethnic survey or did at that time every fall of each district. And then they classified each district according to the number of schools in the district that met the state guidelines. The state guidelines were schools being within plus or minus 15 percent of the districtwide percentage ethnically.

Using those statistics from the State Department of Education we were able to categorize these districts into the seven types.

The first type which had twelve districts we found there were twelve districts that throughout this six-year period had all of their schools in balance according to the state guidelines.

The second group, which contained 32 districts, were districts which were not in balance completely but they did not change during this period and they had over 80 percent of their schools in balance.

The third group, called Stable Medium Desegregation are groups that did not change their ethnic balance in the schools

throughout this period and they were medium desegregated, that is, between 50 and 79 percent of the schools in the district were desegregated.

The Stable Low Desegregation category were districts that also did not change the ethnic balance in the schools [596] during this period but they were highly desegregated. They had over 50 percent of their schools which did not meet the state guidelines.

The next category called Large Change Toward Desegregation there were 15 school districts in that group, Pasadena being one of them, were schools districts which during this six-year period balance 30 percent or more of their schools, thus they went through comprehensive desegregation.

The next category containing nine school districts were districts where there was a slight change toward desegregation during this time where they desegregated 29 percent or less of their schools, brought them into racial balance during this six years.

And then we had this final residual category of five districts that in fact became more segregated during the six years so that they had more schools out of balance at the end of the six years than in the beginning.

Q. Thank you.

Would you explain the meaning of the words "mean number" on the first three tables.

A. All right. The mean number means that this is the average number of students enrolled in these school districts during these years, in this case, black students in the first chart, according to statistics from the State Department of [597] Education. Thus we get the average size of each of these districts in their black populations.

Q. Would you explain how you went about arriving at the numbers listed on the three tables which are the first three pages of the exhibit under the heading Mean Percentage.

A. Mean percentage is the average percentage of black population in these districts of different types. You will note

that the average percentage differs somewhat across these different categories.

Q. I do not quite understand. How is the average percentage calculated?

A. It is based on the hundred percent of the district population so that the base is a hundred percent which would be the total population of the school district and then the percentage of that which is black.

Q. I take it that that method of calculation is the standard method used by persons attempting to make studies of this sort?

A. It is the method used by the BIR, that is the Bureau of Inter-Group Relations as they report school districts by percent black, percent Spanish surname, percent other-white and—

Q. Of the total?

A. Of the total, yes.

[598] Q. Dr. Mercer, would you tell the court what the six charts or figures are which follow the first three pages of the exhibit?

A. The first chart shows the black students in these categories. The second Spanish surname students. The third the other-white students.

Now, on the fourth page we have presented these statistics in visual form. And the paper which is used on this fourth page is a logarithmic paper, it adjusts for the fact that some of these districts are larger in size than the other. But you can visually look at the curves over time, that is the trends over time in these districts.

Now, this is based on the historical patterns of the black students, the total population of black students.

As you look at this chart you will note that these lines are very close to parallel indicating that the percentage increase in black students occurred in districts of all types with some desegregating, some stable, some becoming more segregated, and that there was a slight increase in the percentage black. This is merely a pictorial representation of the numbers on the earlier charts.

Q. And the next chart would be the same as to Spanish surname students?

A. That is right. And you know the Spanish surname [599] population in all types of districts was increasing over this six-year period.

Q. All right. Now, Dr. Mercer, turning to the table which constitutes the last page of the exhibit, would you briefly explain for the court the word "Significance" which appears at the head of the last column on the right side.

A. Would you mind if I were to call attention to the one chart that we skipped on the other-white, it is quite relevant to this testimony?

The lines for the other-white students you will notice begin to decline rather sharply about 1969. They remain relatively stable from 1966 to 1969. And you will notice that in all types of districts there begins a slight downward trend in the percentage of white students in the districts.

Mr. Lane: Your Honor, that does not appear in the copy that Mr. Tonken has here that I am looking at.

The Court: Is that mean number of other white students in 91 California—

The Witness: Right.

The Court: —Unified School Districts with different historical patterns 1966, 1971?

The Witness: Yes, it is in mine. Perhaps that is a page that is not in yours.

[600] Again that is merely a pictorial representation of the numbers on the other chart.

Mr. Tonken: All right.

Q. Let's turn, if you will, to that word significance. I would like you to explain what the word means in the context of this study.

A. This is in the last chart?

Q. Yes.

A. All right.

The very last page attempts to summarize the most important data in this study. It shows the mean percent other-white students in the other 90 California school districts and it does a statistical test called a two-way analysis of variants. Now, this is a statistical test to determine whether the differences in these percentages would likely have occurred by chance or whether they probably are not due to chance. The term "significance" is the actual probability level that these differences occurred by chance. So we will note that under Significance it says .001. This means there is only one chance in a thousand that changes in percentages on that first line would have occurred by chance. The first line shows a drop from 76 percent to 71 percent in white students in the always balanced district.

.001 means that would occur one time in a thousand [601] by chance.

[601] Q. Is one time in a thousand a lot of times for your purposes as they—

A. No, that is very significant meaning it is a very low probability that this is a chance occurrence. And this would usually be accepted, in fact the usual custom is to accept anything that will occur less than five times in a hundred by chance as being a reliable finding. In my own—

Q. Indicating a very small probability of chance?

A. A very small probability of chance, right.

Now, the particular significance of this chart is not only that the percentages have dropped significantly in all types of school districts. You will notice an average of 5 to 6 percent which is a rate of about 1 percent a year. But also you will notice in the footnote it says the interaction term for this analysis is 1.37 which is not significant, meaning that there is no significant interaction between the type of district, that is whether the district was desegregating and the extent to which the population of other white students was decreasing. I consider that the most significant finding on this table.

Q. Fine, Dr. Mercer.

Your Honor, I would offer Plaintiff Intervenor's No. 21 into evidence.

[602] Mr. Lane: Your Honor, just the same objection we had before as to relevancy.

The Court: Doctor, before we do that, are the first three pages all supposed to add up in the last column or between the three of them to a hundred percent?

The Witness: No, they wouldn't because this is the percentage black. For instance, in 1966 the percentage black in the always balanced district is 4 percent. It remained 4 percent in '67, 4 percent in '68, then it went up to 5 percent in '69-70 and '71. They would not add up to a hundred percent necessarily.

The Court: No, I am asking you is whether page 1, 2 and 3 in each column—

The Witness: I see what you mean.

The Court: —each category should add up to a hundred.

The Witness: They won't add up completely to a hundred because this does not take into account Filipino, Asian, American Indian and other students. We are only looking at these three categories, the Spanish surname, black and other-white. So it should come close to a hundred percent but it wouldn't necessarily.

The Court: Would they be off as much as 16 percent?

[The Witness: Well, let's see. The first one in '66—

[603] The Court: Why the large change in '71?

The Witness: The large change toward desegregation. So we have 16 percent black, 19 percent Mexican-American and that would be 35 percent and 59 percent other-white, 35 and 59 would be 84—about 94. Yes, 6 percent would be possible for the other part of the percentage.

The Court: All right.

Mr. Lane: Your Honor, may I inquire as to which page Mrs. Mercer was just referring to.

The Court: Pages 1, 2 and 3, the addition of the three percentages for 1971 for large change toward desegregation.

Mr. Lane: Thank you.

The Witness: You would expect these to come close to a hundred percent. To the best of my knowledge they are accurate and they should come up within a reasonable percentage.

The Court: All right.

The objection is overruled. 21 in evidence.

(The exhibit heretofore marked Plaintiff Intervenor's Exhibit 21 was received in evidence.)

* * * * *

[608] The Court:

Let me ask you the same question I asked Dr. Dilworth, Dr. Mercer.

[609] Can you tell from these numbers why people leave a school district?

The Witness: No, you can't tell. The only way that it would be possible, and that is why I am not doing any studies of white flight, the only way to answer the question, do people leave school districts because they have desegregated would be to conduct a survey where in fact you interviewed people who were moving away and say why are you moving out.

Since such data does not exist to my knowledge anyplace the only recourse we have is to look at the statistical trends over time and try to determine whether there are significant differences between districts that desegregated, those that don't and then make some inferences.

The other type of data would be desirable but unfortunately nobody did those kinds of studies at the time and now it is historic and there is no way to get that data.

By Mr. Tonken:

Q. Dr. Mercer, showing you a chart entitled "Figure 8 Percent Other-White in Public School Population of Pasadena Unified School District 1966 Through 1973, Compared with California Public School Population Estimates After 1969."

I ask that this be marked for identification.

The Clerk: Marked next in order as Plaintiff Intervenor's Exhibit No. 23 for identification.

[610] Plaintiff Intervenor's Exhibit No. 23 before the witness.

(The exhibit referred to was marked Plaintiff Intervenor's Exhibit 23 for identification.)

Mr. Tonkin: Your Honor, would you like a copy of this also?

(The exhibit was passed to the court.)

By Mr. Tonken:

Q. Did you at my request prepare this chart?

A. Yes, I did.

Q. Would you explain, please, the process of its preparation?

A. This is a closer look at the trend line for Pasadena. This line extends back to 1962.

The purpose of going back to 1962 to get the trend line for other-white is to establish a rather long series of years so that the average would be stable, that is why we went back to '62. So that it shows the trend other-white between 1962 and 1973 in Pasadena, that is the solid line on that chart.

Q. What is the—well, let me ask you something else first. What is the source of the data contained in the chart?

[611] A. It is the same source as for the other charts, the Bureau of Inter-Group Relations statistics.

Mr. Lane: Your Honor, then we are going to make the same objection as to relevancy and foundation.

The Court: The objection is overruled. All it shows is a trend, that is all. And that is the only reason it is offered. The objection is overruled.

By Mr. Tonken:

Q. Would you explain, Dr. Mercer, I think you have explained the solid line there on the chart, would you please explain the other two lines that seem to branch from it.

A. All right. The dashed line is an estimate. And as I mentioned earlier, we don't have any survey data so the purpose of this was to make an estimate of what the percentage other-

wise in Pasadena would have been in 1973 if the trends established between 1962 and 1969 prior to desegregation had simply extended on into the future. So this is making an estimate of the trend had it continued as it had prior to desegregation, what would the estimated percentage other-white be in Pasadena be in 1973.

And this chart shows that we would have estimated it would have been about 51 percent on just a straight line projection.

Just to explain that a little more clearly, in the [612] years prior to 1969 the other-white population of the Pasadena schools was declining at the rate of about 2.1 percent a year. All we did was continue that line at the rate of 2.1 percent a year into 1973 and we'd say, well, our best guess would have been if that trend had continued unchanged that there would have been about 51 percent other-white in the Pasadena public school population in 1973.

Q. And the dotted line?

A. Now, the dotted line takes into account the fact that statewide in California the other-white population has been declining.

You remember in my looking at the earlier charts I indicated that about 1969 the white population in California in all other school districts began to decline at the rate of about 1 percent a year. If we assume that that rate would have also occurred for whatever reason it occurs statewide in Pasadena then we would project another trend line where we would add an additional 1 percent a year drop to take into account the statewide trend. And in that case we would project for 1973 an other-white population in Pasadena of about 47 percent. These are two different estimates.

Mr. Tonken: May I have just a moment, your Honor?

The Court: All right.

(Brief pause.)

[613] Mr. Tonken: Your Honor, I would like to offer the chart into evidence as plaintiff intervenor's next in order.

The Court: Any objection?

Mr. Lane: The same objection, your Honor, as to relevancy and foundation.

The Court: The objection is overruled.

For the limited purpose of showing trends, not for any other reason, 23 in evidence.

(The exhibit heretofore marked Plaintiff Intervenor's Exhibit 23 was received in evidence.)

By Mr. Tonken:

* * * * *

Q. Dr. Mercer, showing you a document entitled "Evaluating Integrated Education in Multi-Ethnic Elementary Schools, Pasadena Unified School District, Spring 1972-1973." the document is dated January 1974.

I would like to have this marked for identification, please.

The Clerk: Marked next in order as Plaintiff Intervenor's Exhibit No. 24 for identification.

Plaintiff Interenvor's Exhibt No. 24 before the witness.

(The exhibit referred to was marked Plaintiff's Exhibit 24 for identification.)

Mr. Tonken: Your Honor, a copy for you.

[614] (The document was passed to the court.)

By Mr. Tonken:

Q. Dr. Mercer, did you prepare this document?

A. It was prepared under my direction.

Q. At whose request was it prepared?

A. It was prepared at the request of the Pasadena Unified School District.

Q. And for what purpose was the document prepared?

A. This document is a report of the evaluation of integrated education in the elementary schools at the Pasadena Unified School District which was conducted by my staff at the center in Riverside.

Q. What characteristics of the Pasadena schools does the document report?

Mr. Lane: The document speaks for itself, your Honor.

The Court: The objection is sustained.

By Mr. Tonken:

Q. Dr. Mercer, without interpreting or evaluating the data that is contained in the document would you please explain to the court how to, I'm not sure how to phrase this, your Honor, I intended to ask the witness to explain to the court how to read the document. It is rather technical and complex.

[615] Mr. Paul: He shouldn't make my mistake, your Honor.

The Court: I hope he doesn't.

Mr. Paul: That nun will be looking down on him too.

The Court: He may need her help too.

By Mr. Tonken:

Q. Since the document is rather technical, Dr. Mercer, would you please explain how to approach the charts contained in it.

A. All right.

As I mentioned earlier, we are evaluating elementary education in about 15 school districts. Thus we have developed a standard form of reporting for findings back to each of the school districts. This is what you see in our standard format.

The data is collected from students and from teachers. The questionnaires are optically scanned, run through the computer and these profiles that are in the document are produced by the computer on the Riverside campus.

This particular report on the profile, if we take say the first profile in this document, it presents the scores, for example, on self-esteem for the black, Anglo, Mexican-American and Asian-American children in the Pasadena School [616] District in the spring of 1972.

The X's on the line represent pictorially where the scores for those four groups of youngsters fell.

The horizontal line down the middle shows the median score based on the standardization sample that we tested originally

in establishing the norm for this test. The extent to which those score are above or below that line is some measure of the quality of education. These charts attempt to measure both the quality of educational environment and the equity in the educational environment.

Quality is measured by the extent to which the scores are above or below the norm. Equity is measured by the extent to which the scores of children of different ethnic groups are similar. It is our philosophy that in an integrated school there will be both quality and equity in the educational program.

Now, to the right of the profiles we present a one-way analysis of the variants. And this tells us statistically whether the differing scores of the children of differing ethnic groups would be likely to have occurred by chance. We don't want to be interpreting things that are of no importance.

We see that for the Pasadena School District on this first chart that only one time in ten thousand would such [617] differences occur by chance when this number of children have been tested and we would accept that as a stable finding.

Immediately below the data for 1972 is presented the same information collected in the spring of 1973. A person can visually look at the scores in 1972 and look at them in 1973 and can visually make a comparison. However, we can't count on just our visual comparisons because that could be in error. So consequently we conducted another statistical test in which we compared the scores in 1972 with those in 1973 to determine whether there had been any change over that one-year period. And that is the information reported immediately below each of these charts. And the significance levels are given. As you can see the charts are relatively complex, however, they do provide a tremendous amount of information when they are studied carefully.

I think other than that the document does speak for itself. I hope it does, we worked very hard to make it understandable to the person who is not necessarily trained in statistics.

Mr. Tonken: Your Honor, I would like now to have marked for identification a table entitled "Number of Statistically Significant Changes Between 1972 and 1973 on Student Measures for the Pasadena Unified School District Reported by Total District and for 25 Elementary Schools by [618] Ethnic Group."

The Clerk: Marked next as Plaintiff Intervenor's Exhibit 25.

Plaintiff Intervenor's Exhibit No. 25 before the witness.

(The exhibit referred to was marked Plaintiff Intervenor's Exhibit 25 for identification.)

Mr. Tonken: And one for the court.

(The document was passed to the court.)

By Mr. Tonken:

Q. Did you at my request prepare the table which you have just been handed?

A. Yes, I did.

Q. Does the table relate to the study entitled "Evaluating Integrated Education in Multi-Ethnic Elementary Schools" which has been marked for identification which we just finished looking at?

A. Yes, it does relate to that study.

Q. In what way does it relate to that study.

A. First I must explain that these profiles which have been presented in evidence for the entire school district that we developed a set of profiles for each individual school in the district. Now, that would have been too much to present in evidence but for each individual school there is a set of [619] profiles that is similar on a school by school basis.

This chart attempts to summarize in a rather succinct way what significant changes were in the district between 1972 and 1973. And in the 25 schools that were studied how many of those schools showed significant changes in that one-year period on these various measures.

Now, for example, for black children the district measures that there was no change in the self-esteem score that was significant. No change in the reflected self score. However, there

was a significant change on the anxiety scores. The plus at the top of the column indicates that it was a positive change. It was a change in a positive direction. If it had been a negative change it would have appeared under the minus direction. So this indicates that the black students in Pasadena had significantly less anxiety as measured by their responses to our questionnaire in 1973 than 1972, which we would consider a positive change.

On no other measures in this chart did we find a significant change for black students at the district level.

Now, if we look at the next column this looks at the 25 schools which we measured and simply reports the number of schools that showed a change in these measures.

Now, for example, a self-esteem score—let me explain why these numbers don't match because I am sure your [620] Honor will ask me that question.

That there were only 24 schools in which there were enough black children to calculate scores. We only calculate scores if there are at least ten children who complete the questionnaire. So while there were 25 schools in the sample in all there were only 24 schools in which there were scores for black children and, in fact, there were only twelve schools in which there were scores for Mexican-American children. This merely reflects the fact that all schools do not have a significant number of Mexican-American children. You notice under Anglo-American children I hope all the columns add up to 25, they are supposed to.

Going back with that explanation with, say, self-esteem for black children, it shows that there was no change, no significant change in any of the individual schools nor in reflected self. There were positive changes in anxiety. One school in status anxiety, in two schools in school anxiety.

Mr. Lane: Your Honor, doesn't this document speak for itself?

The Court: It does not explain itself.

The Witness: I would think that the major thing that this docunment indicates, if you will look at the total at the bottom of the page is that it—

[621] The Court: Let me ask you, in attitude to school you have under black, for instance, a 1 and a 2, 1 in the plus and 1 into the minus column. What significance does that have?

The Witness: That means in one school black children scored significantly more positively in their attitude toward school in '73 and '72. But in two schools they were significantly more negative.

Now, the reason for our doing this, and we don't ordinarily prepare this type of chart, is we take these profiles back to each individual school staff and they look at the profile for their school. They think about the learning environment in the school. We hope that as a part of our conversations with them they will begin to set goals and move toward integrated learning environment.

The major finding on this it seems to me is that there has been tremendous stability in the school district over this one-year period. There are relatively few of these measures that have changed in either positive or negative direction. There is certainly no indication of serious problems in the school district as far as change over time.

By Mr. Tonken:

Q. In terms of the categories that are studied in the exhibit which has been marked for identification and which we [622] looked at just prior to this one.

A. Right.

Mr. Tonken: Your Honor, I offer both exhibits into evidence.

The Court: Any objection?

Mr. Lane: Your Honor, we fail to see the materiality of Exhibit No. 24, that is the big one, and as to 25 again foundation, your Honor, and materiality.

The Court: Mr. Lane, you are telling me the court should not be interested in what is happening educationally in Pasadena?

Mr. Lane: No, your Honor, I am not.

The Court: That is what this is supposed to tell me, isn't it?

Mr. Lane: As I understand it, your Honor, it is an attitudinal study rather than educational.

Mr. Lane: That is it.

The Court: Don't you think the court should be interested in what is happening educationally in the district?

Mr. Lane: Yes, your Honor, I do think you—

The Court: Don't you think I should be more interested [623] in that than almost anything?

Mr. Lane: I think that is an important consideration for the court.

The Court: All right. 24 and 25 in evidence.

(The exhibits heretofore marked Plaintiff Intervenor's Exhibits 24 to 25 were received in evidence.)

By Mr. Tonken:

Q. Dr. Mercer, have you read the defendant's proposed modification to the current plan, that is the alternative plan that has been proposed?

A. Yes, I did.

Q. In your studies of school desegregation in California have you had occasion to study other school districts which have attempted to implement plans similar to the defendant's alternative plan?

A. Yes, we have.

Q. Is one of those districts the San Bernardino School District?

A. Yes, San Bernardino and Richmond have both tried voluntary open enrollment plans.

Q. Would you tell the court what your involvement has been with the San Bernardino School District and its desegregation efforts?

[624] A. San Bernardino was one of the school districts in our sample, and over the years I have served as a consultant to the school district. In fact, I am supposed to be there tonight to talk to the school board. So I have had continuing involvement in San Bernardino.

Q. I take it that you have collected data over the years on San Bernardino?

A. We have systematic data more recently but on a basis of consultation earlier.

Q. You have served as a consultant to the San Bernardino schools?

A. Yes.

Q. Would you describe the desegregation plan which San Bernardino implemented.

Mr. Lane: I object to that on the grounds of materiality and relevancy.

The Court: Wouldn't it be interesting to know whether or not the plans can work or it is being used? Wouldn't they be interested in that?

We will take that up at 9:30 tomorrow morning so that you can be there.

The Witness: Thank you.

(Whereupon, at 5:30 p.m. an adjournment was taken until 9:30 o'clock a.m., Friday, March 1, 1974.)

VOLUME 4—MARCH 1, 1974.

Direct Examination of Jane R. Mercer, Continued.

[Volume 4, Page 628]

JANE R. MERCER, called as a witness on behalf of the plaintiffs, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Tonken.

Q. Dr. Mercer, do you recall that when we left off yesterday afternoon I was asking you about the desegregation effort in San Bernadino County, California.

A. Yes.

[629] Q. We had established that you had read the defendant's proposed alternative plan, is that correct?

A. That is correct.

Q. Now, put our discussion of San Bernardino in perspective, would you tell the court again, please, about the nature of involvement with San Bernardino and its attempt at desegregation.

A. San Bernardino was one of the school districts that is part of our larger sample that I discussed yesterday. But even prior to their becoming part of that they—I had served as a consultant to the district. I had known the superintendent and his staff over a long period of time and been in and out of the district.

One thing I did neglect to mention was that I served as a witness in a San Bernardino desegregation case so that I had access to the documents from the district that were a part of that case so I am quite familiar with the internal workings of the district.

Q. You and your staff have been compiling data from the district?

A. Yes, we have been from the district.

Q. Would you please describe the desegregation plan which San Bernardino implemented?

Mr. Lane: Your Honor, I am going to object on the [650] grounds of lack of foundation that the plan in San BeBrnardino is similar to the alternative plan in Pasadena. And, secondly, on the grounds agin of relevancy.

The Court: The objection is sustained on the grounds of foundation.

By Mr. Tonken:

Q. Dr. Mercer, would you tell the court—

The Court: What was the San Bernardino plan, what did they do?

The Witness: Ours is similar to Pasadena, I will be glad to answer that question.

The San Bernardino plan was essentially a voluntary open enrollment plan in which the school district provided transportation for any students who wished to go to another school as long as it would improve the racial and ethnic balance.

They also made strenuous efforts to improve both by improving the physical facilities in the programs, in the money spent in the black ghetto schools to improve the program. They did not call this a magnet school program. They didn't have that sort of a name but they made a very strenuous effort to make the schools in the black community attractive. And so in that sense it was similar that it is a voluntary open enrollment. They call it a controlled open enrollment [631] plan. The district provided the transportation.

They hired a special person, called in an Inter-Group Relations man who had sole charge of implementing this and they gave him a staff of people to work with him.

They recruited especially in the minority community. They went house to house to try to get people to participate in the plan.

I think in that sense it is quite similar to what Pasadena is proposing.

Mr. Lane: I move to strike the last statement of the witness.

The Court: That will go out as a conclusion of the witness.

By Mr. Tonken:

Q. Dr. Mercer, have you studied and compiled data on the results of the plan in terms of the number of students who took advantage of the opportunity to desegregate under the plan?

A. Yes. I have two sources of data. The total number of minority students in the district which comes from the State Department of Education files, and the total number of students who participated over about a seven-year period which is information that was provided by Dr. Lou Bonney who is the research director for the district. And those numbers [632] are also on file as part of the court case over there so I feel they are quite accurate since Bonney submitted them to the court at that time.

Mr. Lane: Your Honor, may I enter an objection at this time to the witness continuing to editorialize as to each question instead of answering the question that is asked.

The Court: Yes, Doctor.

The Witness: I will be more careful.

By Mr. Tonken:

Q. So you have compiled data on the results of the plan. Dr. Mercer, what were the result of the plan?

Mr. Lane: Your Honor, I would like to interpose an objection again at this time as to the relevancy and foundation as to the similarity to the Pasadena plan. As I understand the testimony of the witness there are no alternatives as suggested in the Pasadena alternative plan. It is limited to the black neigh-

borhoods and not throughout the district. Therefore, your Honor, we submit that it is not proper testimony.

The Court: That objection is overruled.

All right, Doctor.

The Witness: And that was not quite accurate. It was not limited to the black community.

The Court: That is all right, Dr. Mercer.

[633] The Witness: All right.

By Mr. Tonken:

Q. What were the results, Dr. Mercer, of the plan in terms of the number of students who took advantage of the opportunity?

A. As I recall the statistics that you have on the chart, I believe the largest number of students who ever participated was around 1,500, which was approximately 15 percent of the minority population. At no time did any white students participate in the program or volunteer, though it would have been open for them to transfer if they wished.

Mr. Tonken: Your Honor, I would like to have marked for identification a document entitled "Participation in Controlled Open Enrollment Program, San Bernardino City Unified School District, 1967 to 1973."

The Clerk: Marked for identification as Plaintiff Intervenor's Exhibit No. 26.

Plaintiff Intervenor's Exhibit No. 26 before the witness.

(The exhibit referred to was marked Plaintiff Intervenor's Exhibit 26 for identification.)

By Mr. Tonken:

Q. Dr. Mercer, did you prepare that document on the basis of the data which you have compiled in San Bernardino?

[634] A. Yes, I did.

Q. Dr. Mercer, have you in the course of your studies of school desegregation in California had occasion to study the desegregation efforts of the Richmond, California Unified School District?

A. Richmond was part of the statewide sample of districts that I referred to yesterday. The information we have on the Richmond School District comes from the state ethnic survey from a questionnaire which the school district completed for us as part of our study and from the files of the Bureau of Inter-Group Relations.

Q. Would you describe the similarities between the Richmond, California school district desegregation effort and the defendant's proposed alternative plan?

A. The history of the Richmond effort was essentially as follows. Following a court order they were ordered to comprehensively desegregate the district. There was a recall and they set up a cross-busing program for comprehensive desegregation. There was a recall election. The new board which was elected following the recall set up a voluntary open enrollment program and set aside the comprehensive desegregation program which had been voted upon which had not actually been implemented by the previous board.

Under the voluntary program they had open enrollment [635] voluntary cross-busing. The district provided the transportation. Once again they made strenuous efforts to make especially the schools in the minority neighborhoods quite attractive.

They went back into court. They were taken back into court on the basis of the voluntary plan. The judge in that case permitted them to go ahead with the voluntary plan and held back the final order to determine whether the voluntary plan would be successful.

As I understand it, that case is still pending.

Mr. Lane: I would like to move to strike the last portion of the witness's testimony being nonresponsive to the question.

The Court: The objection is overruled.

Mr. Lane: The best evidence, your Honor, as to what the court did or did rule.

The Court: On that ground the motion is granted.

By Mr. Tonken:

Q. Dr. Mercer, you and your staff have been compiling data on the Richmond School District?

A. Yes, the data that I mentioned.

Q. Have you compiled data or studied the results of the Richmond plan in terms of the numbers of students who took advantage of the opportunity to desegregate there?

[636] A. We have data over a three-year period. I believe it ends in 1972 as I recall the chart.

Q. And what was the source of the data?

A. It came from the school district itself and from the Bureau of Inter-Group files.

Q. And what were the results of the effort to desegregate in Richmond?

Mr. Lane: Your Honor, I am going to object again at this time as to relevancy as to Richmond as to Pasadena, its operation of the alternative plan as suggested to the court.

The Court: The objection is overruled.

Mr. Lane: Also, your Honor, it calls for a conclusion and no foundation laid.

The Court: The objection is overruled.

By Mr. Token:

Q. What were the results of the desegregation effort in terms of the number of students who took advantages of the opportunity?

A. In the peak year on that chart I believe about 11 percent of the minority students participated in the open enrollment plan. And at no time did any white students petition to become involved in the plan.

Mr. Token: Your Honor, I would like to have marked [637] for identification a document entitled "Participation in Voluntary Open Enrollment Program, Richmond Unified School District 1969 to 1972."

The Clerk: Marked for identification as Plaintiff Intervenor's Exhibit No. 27.

Plaintiff Intervenor's Exhibit No. 27 marked for identification and placed before the witness.

(The exhibit referred to was marked Plaintiff Intervenor's Exhibit 27 for identification.)

By Mr. Token:

Q. Dr. Mercer, did you prepare the document which the court has just given you?

A. Yes, I did.

Q. On the basis of the data you have compiled?

A. Yes, I did.

Mr. Token: Your Honor, for the purpose of illustrating numerically the results of the voluntary desegregation in both these districts I offer Plaintiff Intervenor's Nos. 26 and 27 into evidence.

The Court: Any objection?

Mr. Lane: Your Honor, the same objection as to relevancy and foundation.

The Court: The objections are overruled.

26 and 27 in evidence.

[638] (The exhibits heretofore marked Plaintiff Intervenor's Exhibits 26 and 27 were received in evidence.)

Mr. Tonken: Your Honor, I wonder at this time if I could have Defendant's Exhibits AK, AL and AN before the witness and before the court.

The Clerk: Defendant's Exhibits AK, AL and AN before the witness.

Mr. Tonken: Could we set them up so they could all be seen at the same time, please.

Q. Dr. Mercer at my request have you studied Defendant's Exhibits AK, AL and AN?

A. Yes, I did.

Q. Are you familiar with the term cumulative deficit?

A. Yes, I am.

Q. Could you explain to the court what the term means?

A. Cumulative deficit is a term that is used to describe the characteristic of the growth of minority children in segregated schools which has been found in social science research that is the fact that the further they go through the school system the further behind they tend to become in their educational development as compared to white students. In other words, they grow at a slower rate than white students so that the longer they are in the school system the further they are behind so that it becomes a cumulative deficit.

[639] Q. Do you see any evidence of a cumulative deficit in Defendant's Exhibits AK, AL and AN?

A. I found one of the most interesting things about this particular chart which Dr. Armor neglected to point out was that if you will focus—

The Court: You are editorializing.

The Witness: I am sorry.

If you look at the years 1969 and 1970, that is the year prior to the desegregation, statistics in those years represent the outcome of education in the segregated schools in Pasadena. So this gives us data on how well students were achieving in the Pasadena schools as a result of the desegregated program since this is the base line year.

Now, I would like, your Honor ,to note, if you will, if you look at grade 1 achievement and compare the black children who are in the red on that chart with the achievement of the white children that are in the triangles that the black children in grade 1 in the segregated schools were 8/10ths of a standard deviation behind the white children, that is in grade 1.

By Mr. Tonken:

Q. That is this?

A. 8/10ths of a standard deviation behind.

Now, we look at the grade 4 children in the segregated [640] schools and we have to go to this chart over here. You will note that the black children were 1.1 standard deviation behind the white children by the time they got to grade 4.

Then we go up to grade 8 and look once again at the 1969 statistics. The black children are 1.2 standards deviations behind the white children. In other words, in the segregated schools they were getting further and further behind the white children the further they went, which is evidence of a cumulative deficit which was developing in the system at that time.

Q. Do you see evidence of a cumulative deficit elsewhere in Defendant's AK, AL and AN?

A. Well, no, that would be the evidence of the cumulative deficit. You would have to take that as the base line data.

Now, you note since desegregation, and Dr. Armor testified to this fact and I would agree with him, that since desegregation the chilren have been growing at the same rate of speed. That is, there has not been any cumulative deficit. That in fact over the three-year period under the Pasadena plan the minority children have grown at the same rate. The lines are parallel. So it seems to me that since desegregation that in fact the cumulative deficit apparently existed in the segregated schools has disappeared which would be distinctly [641] a net gain. There aren't too many districts claimed to have achieved that.

Mr. Lane: I am going to move to strike that answer as being nonresponsive to the question asked by counsel.

The Court: The motion is denied.

Mr. Tonken: May I have Defendant's Exhibit AM and AO.

The Witness: There is one other thing I would like to point out to your Honor, if I might, before the charts are taken off.

The Court: There is no question pending, Doctor.

The Clerk: Defendant's Exhibits AM and AO before the witness.

By Mr. Tonken:

Q. Dr. Mercer, have you studied Defendant's Exhibits AM and AO at my request?

A. Yes, I did.

Q. Do you see any evidence of a cumulative deficit in Defendant's AM and AO?

A. Yes, I do. These charts show math achievement. If you will analyze them in the same fashion as I suggested for the reading charts, look at the year 1970 in grade 4, black children were one standard deviation below the white children in Pasadena. But by grade 8 they were 1½ standard, [642] 1.4 standard deviations behind the white children in Pasadena in 1969, distinct evidence of a cumulative deficit in math achievement.

However, after the implementation of the Pasadena plan the lines become parallel.

Mr. Lane: Your Honor, I object to the last portion of the witness's statement as being volunteered.

The Court: The objection is overruled. Motion denied.

Mr. Tonken: Your Honor, that is all the questions I have for Dr. Mercer.

The Court: Cross-examination.

Mr. Lane: Yes, your Honor.

Cross-Examination of Jane R. Mercer.

Cross-Examination by Mr. Lane.

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[644] Mr. Lane: Your Honor, may I have placed before the witness Exhibit 21.

The Clerk: Plaintiffs' or plaintiff intervenor's?

Mr. Lane: Plaintiff Intervenor's Exhibit No. 21.

The Clerk: Plaintiff Intervenor's Exhibit No. 21 before the witness.

By Mr. Lane:

* * * * *

[647] Q. The thrust of my question is this. If in 1970 the number of black children throughout increased throughout the 91 school districts, increased, and the number of Spanish surname children throughout the 91 districts increased, your percentage as shown on page 3 of other-whites, even if it remained constant, would decrease, isn't that true, as a percentage of the whole?

A. Sure that is true.

Q. Referring again to page 3 of Exhibit 21, Dr. Mercer, doesn't your analysis show that the school districts, the largest change toward desegregation experienced the highest rate of white loss among the categories listed?

A. No. In fact, it does not show that. I mean you cannot just look at trends and say, well, one is 6 percent and one is 7 percent and conclude that they are different. That is why we have statistical tests.

But even just eyeballing this chart, if you look at the decline in rates like it goes down 5 percent in the ????? [648] district, declines 5 percent in the stable nondesegregation, declined 3 percent in the medium desegregation, you look at these yourself, 4 percent, 7 percent, 6 percent, I am just figuring these in my head, it goes down 10 percent in the districts that become more segregated.

The question we have to ask is are these changes in percentages which range from 3 percent in some types to 10 percent in other types are related to desegregation. We find in fact those districts that decline the most in white enrollment were districts that were becoming more segregated rather than desegregated.

Q. Dr. Mercer, if we take your mean numbers here that indicate, as I understand it, the average number per district, is that correct?

A. Well, it is the average number in all five of these districts. I said we took all the districts and we just had the numbers, we'd strike an average.

Q. If I read your numbers correctly, and correct me if I am wrong, on the large change toward desegregation category the number in 1966 of students, the mean was 9,229.

A. Right.

Q. 1971 it was 7,393.

A. Right.

Q. It would indicate a loss, as I figure it, of [649] approximately 19-some percent during that time period.

A. But you are calculating your percentages the way Dr. Dilworth did and that is not the way we have done it here.

Q. Would that be incorrect, my computation on that basis?

A. I would not agree with that way of calculating percentages. I had not planned to raise that as an issue. That exaggerates the trends. The percentages that we are using here are the ones as reported by the Bureau of Inter-Group Relations. We are always operating from the base of 100 percent, so that in the total universe that we are always looking at what percentage of the total kids attending school in this district is white. Now, we don't look in calculating trends—you see the difficulty, I am editorializing again but it is your question.

Mr. Lane: I ask to strike that as not being responsive to the question. She is editorializing here.

The Court: All right.

By Mr. Lane:

Q. Dr. Mercer, your mean percentages that you have listed here that simply is an indication of what percentage the white children are of the total children in the district, correct?

A. Right. Right.

[650] Q. So if you have an increase in black children or Spanish surname children the decrease will appear in the white number that is listed on page 3?

A. It could be but that in fact has not been the case in California as you look at these statistics. There has been a steady decline in the white children as well as an increase in black and brown children. But you are absolutely right. You could get a change in percentage even though the white children had remained the same and the black and brown had been going up, that is true.

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[652] Q. In the study you conducted it was also your opinion, was it not, that if you put low achieving black students with high status white children that had a demoralizing effect?

A. It tended to and this is one of the dilemmas from that study. The relationship seemed to be the friendliness of the Anglo children, high status Anglo children were less friendly than low status Anglo children. It is one of the dilemmas.

Q. Now, when you study the decline of white enrollment in a district do you study the white decline as contrasted to the whole student body or do you do what is a net loss which is a study of the Anglo loss for one year to the next?

A. No, I do it across the whole district. The reason for that is if you make your percentage only on the basis of the Anglo population you are bound to show an increase in rate.

[653] Let me illustrate very simply. If you start with a thousand whites and you lose a hundred of them, okay, that is a 10 percent loss. You use that thousand as a denominator for your first term. Then the next year you have only 900 whites left so if you lose a hundred the next year then your percentage is going to be 1/9th which would be like 11 or 12 percent. If you lost a hundred kids each year because your denominator is getting smaller your rate is going up so this makes it look as if you have an accelerating rate of loss when in fact you are only talking about a hundred persons a year. That is why I don't agree with that way of calculating rates and why we stick to a hundred percent of the population.

Q. Isn't this the way to calculate net loss within a district as to how many white children are in fact leaving the district?

A. It is a way to do it, it is a way that I don't believe demographers ordinarily use. It might be appropriate for accounting.

Q. But it is an accepted way, is it not?

A. I have never seen that used. Usually in the sort of statistics that I deal with, that particular method of talking about loss is not used. They deal with a hundred percent. In fact, I was surprised to see it used because the data the State uses always operates from a hundred percent population.

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[656] The Court: Dr. Mercer, you talk about cumulative deficit. Is there a cumulative gains kind of thing?

The Witness: It could be. There are two or three things about the chart—am I permitted to just comment on the charts to you?

The Court: Is there such a term as a cumulative gain?

The Witness: No, there has not been. The cumulative deficit was coined mainly to describe what happens in desegregated schools to minority children, the fact they get further and further behind so that by the time they graduate from high school they are much further behind relatively than they were in elementary schools. In fact—

The Court: Could you apply the same logic to a gain?

The Witness: You could, yes.

The Court: Do you find anything there?

[657] The Witness: Well, in fact if we just want to look at this, I remember looking at some of these charts, it is important to note on these charts that the white children in the charts have not suffered any sort of a loss. If you will notice they are all above the norm, at or about the norm by about the same distance both at the beginning and after desegregation, which I think is important that during the Pasadena plan there is no indication that the white students have lost.

I did some quick calculations in my head. On a couple of the charts it looks as if they have even gone up a little bit so that instead of being 1/10th of a standard deviation above the norm they actually are a little bit higher at the end of the desegregation plan.

I would not want to make any big issue about that. I think the fairest thing to say is that they have continued to grow at the rate they apparently were growing in segregated schools.

Minority children are now growing at the same rate as the white children and the evidence from those charts is that that was not true when the schools were segregated.

The Court: In your studies of this problem wouldn't you expect a gain, if there were going to be any gain to occur or begin to show?

[658] The Witness: In order for this gap to close, that is, to get convergence between the black and white scores would require that black children grow faster than white children, that they be in the same schools but they relatively be learning more so that they would be catching up. It's like a race where everybody is moving and if you move at the same rate of speed the distance between you remains the same. Now, for somebody to catch up they have to run faster. And I posit that is a very difficult burden to lay on children. And if indeed they are now growing at the same rate as white children that certainly is a gain over segregated schools.

We have discovered in our studies that there are a few schools, two or three in fact, that have managed through special programs to speed up the growth in black children so they in fact have grown faster than white children and have come up toward the norm and have been overall gaining. But this is a very difficult thing to do educationally as you can see.

The Court: Doctor, how long would you expect that to take?

The Witness: It depends upon the programs in the school. May I give you an example?

There is one school in Riverside, California, the [659] Longfellow school. It was one-third black, one-third Chicano, one-third Anglo. They developed a very extensive program in reading in that school with Title 1 funds, a pair of professionals, a great deal of parent involvement, all the sorts of things we talk about that should take place in a school. Over a four-year period they were able to bring, and these were lower class children, all of them were lower class children, they were able to bring that school which had been third from the bottom in the district in reading up so that it was about fourth from the top and all the children were reading above the norms in reading. This was a four-year period. So it is not impossible. There

are a few schools that have done it but it takes immense effort and dedication and assistance from the community and the parents.

The Court: Doctor, you said something about the lowering of the white achievement. I did not get quite all of it. Did you say that the high achievers appeared to drop more than the medium and low achievers?

The Witness: No, there is no drop in the white achievement. There has been a consistent finding in all the studies. Dr. Armor's charts reflect that fact in Pasadena. Desegregating the schools and putting lower achieving children into the classes with higher achieving white children does not [660] in fact seem to depress the scores of higher achieving white children.

The Court: We weren't talking about the charts but you said something in your studies in an answer to Mr. Lane that in your studies you found that there has been some lowering of white achievement.

The Witness: No, let me correct that if that was interpreted that way.

The question Mr. Lane was referring to was a paper that I wrote a year ago that was a preliminary analysis of the findings from this study.

In this paper what we found was that in Pasadena the children had apparently been assigned quite randomly under the Pasadena plan, that is, that some schools contained low status black children, high status white children, I am talking now about economic levels, some middle status, in other words, they were randomly assigned. It was as if it were a natural experiment, you know, like an experimenter would go in and would randomly assign them.

* * * * *

ARGUMENT OF COUNSEL.

[675] The Court: We will take a ten-minute recess and you gentlemen can start your arguments.

(Short recess.)

* * * * *

[708] The Court: Let me ask you, Mr. Paul, because the arguments that have been made and the things that have been talked about are that the big problem with the Pasadena plan is that it does not provide for neighborhood schools. That is what it is all about, isn't it?

Mr. Paul: I am coming to that, your Honor. That is one of the things.

The Court: Well, that is what it is all about though. That is what the argument is all about, isn't it? That it does not provide for neighborhood schools.

Mr. Paul: No.

The Court: How do you expect, or nobody has told me how they expect, that if that is the philosophy which prompts the submission of an alternative plan, that because you change the word "voluntary" to "forced" or "forced" to "voluntary" that you will get anybody to leave their neighborhood school. And if you can't do that as night follows day there will remain in the Pasadena School District nine black schools and the rest white schools unless you can show the court somehow that you are going to change people's attitudes toward integration or desegregation, or whatever you want to call it, or a multi-racial education by changing just one word, voluntary from forced. The evidence is that [709] the busing is going to have to be the same or more. How are you going to change that if the philosophy is neighborhood schools? If the philosophy is busing that creates a whole different problem because what difference does it make whether it is forced or voluntary, if the philosophy is busing.

If the philosophy is neighborhood schools you can never—east is east and west is west and in Pasadena never the twain shall meet.

Mr. Paul: Your Honor, I most respectfully disagree with what the court has said. Busing—I as a lawyer in this court have not regarded the busing problem or the busing question as an issue in this case. We are going to have busing, your Honor. The board intends to continue busing. Any child may bus, as I have said, under the alternative plan within his zone.

* * * * *

[723] Mr. Paul: Well, you see it isn't, unfortunately, that simple because in this case the K-6 concept departs from the Pasadena plan. The K-6 concept must be employed if parents are to be given an opportunity on the basis of freedom of choice to send their children to their neighborhood schools.

* * * * *

[740] Mr. Paul: I understand that very well. But we do recognize I believe, your Honor, a situation where you have a school board in office which—let's forget integration, let's forget segregation. Let's forget those emotional issues. Let's assume there are two school boards or—there is a school [741] board and candidates to replace them. And they have completely opposite views on education of kids and they argue their respective positions to the voters. And that was done in Pasadena. The old board espoused and argued just as vehemently to the Pasadena plan as did their opposition to throw them out. And a majority of the voters threw out the old board and installed a new board. And the new board, your Honor, came into office and submitted on the basis of their electioneering to the proposition that they wanted to restore the neighborhood schools. I don't think there is any question but that that was the issue. Forced busing, no.

The Court: No?

Mr. Paul: The neighborhood school?

The Court: Just a moment, Mr. Paul.

Mr. Paul: I think your Honor has the majority of the audience.

The Court: No, I do not have a majority. I do not work by majorities.

(Brief pause.)

The Court: You do not think "Stop forced crosstown busing" was the issue?

Mr. Paul: Your Honor, I think it is a question of semantics. Mr. Marcheschi reminds me that the campaign literature made repeated references to forced busing.

The Court: Does not "Stop forced busing" as an [742] issue—incidentally, on this one particularly I do not see anything about neighborhood schools in the so-called flyer that is supposed to attract attention. What is supposed to attract attention is "Stop forced busing." And I do not see the headlines here to indicate that candidates allege that we will have neighborhood schools. Candidates pledge to end forced cross-town busing.

Mr. Paul: Your Honor, the basic issue, the basic question in the election apart from the literature which is always designed to try and attract attention, the real issue is what in the Pasadena election, as I understand it, I voted in the election, was whether or not parents of the elementary school age children would be given the right to have their kids attend the neighborhood school and forced busing was an issue only and only in the sense that forced busing meant you may not attend your neighborhood school. That was the only significance of that particular issue. There is nothing I repeat—

The Court: But that was the visceral issue. The way to achieve it was by pretty words. And the pretty words "Stop crosstown busing" faces the question directly. But the neighborhood school concept is the pretty words that say, gee, this is nice.

Mr. Paul: Well, there are a lot of parents who think it is nice.

SUPPLEMENTARY EXHIBITS.

PLAINTIFFS' EXHIBIT VIII.

THE NEW PASADENA PLAN.

A Recommended New Approach to Achieve Voluntary Integration and Equality of Educational Opportunity in the Pasadena Unified School District.

by

H. Marcheschi, Member
Board of Education
Pasadena Unified School District
Pasadena, California.

Part II—The Plan and Its Implementation.

November 9, 1971.

One can mix persons of varying races forever and never achieve integration. For unless every person is allowed to develop as a whole person, instead of being forced to subsume his personality and culture for the sake of assimilation, there can be no integration. We may call it "desegregation" at best, but not "integration."

Buddy Jackson, Director
Black House
Berkeley School District

THE NEW PASADENA PLAN.

1.0 *Foreword.*

In Part I of this presentation I outlined the urgent and compelling reasons why the present Pasadena Plan must be changed. Among these reasons were the following:

1.1 The present Pasadena Plan has grossly accelerated white exodus from the school district. Since its emplementation, a total of 4,011 white chilren have left the school system. This represents a cumulative drop of 23.9%, or almost one out of every four white children that were enrolled in the school district before the Pasadena Plan. White enrollment now comprises only 50% of the total student body, and only 46.4% in the elementary schools.

1.2 Based on the racial mix presently existing in the Pasadena School District, it can conclusively be shown that the present racial balance plan will not in and of itself increase minority group achievement. In fact, it can be demonstrated that danger of decreased white achievement exists.

1.3 The Pasadena Plan does not satisfy special educational needs of certain minority children. It denies Black parents the right, if they so choose, to send their children to predominantly Black schools where the educational process is especially tailored to Black needs as Blacks see these needs.

1.4 The Pasadena Plan entails substantial incremental costs which are being borne almost entirely by the School District at the expense of educational programs.

Part I of the presentation stressed that while the community is strongly divided over the present Pasadena Plan, general agreement exists as to the goals it attempts to achieve. Therefore,

there is substantial hope for a new plan which would achieve equivalent goals by more realistic and productive means.

Let it be perfectly clear the New Pasadena Plan is an integration Plan. Its primary purpose is to achieve a consensus of acceptance, thereby stabilizing the community in order that integrated schools become an achievable reality rather than an impossible dream. It is admittedly an imperfect plan, and rightly so, for it is built to compromise and bridge the wide gulf that now separates proponents and opponents of the present plan.

It should be further made clear that what follows is a rather explicitly defined concept—not a detailed school-by-school plan. It is expected that detailed analysis will be required to optimize implementation of the new plan and, of course, such analysis may well result in variations not contemplated in detail by the present outline.

The relative merit of the New Pasadena Plan, in the final analysis, hinges solely on one question—*Will it work?* I am convinced that it will.

2.0 Summary of the New Pasadena Plan.

Basic elements of the New Pasadena Plan are as follows:

2.1 The new plan is based on the concept of neighborhood schools. Integration is achieved by a number of practical alternatives including busing of Black children into white neighborhood schools. Under the plan, Black parents gain the right of self-determination and have the freedom to choose whether their children will attend integrated schools in the White community or majority Black schools located in the Black community under Black control. White parents have the freedom to choose whether their children will attend integrated neighborhood schools or majority Black schools in the Black community.

2.2 All elementary schools would be reconstituted as K-6 schools. Junior high schools would continue to consist of 7th and 8th grades. Senior high schools would still consist of grades 9 through 12, and are treated below as a separate phase of the New Pasadena Plan.

2.3 All elementary and junior high school students would be initially assigned, as a procedural step, to their neighborhood school, such preliminary assignment being predicated solely on geographical factors and school size.

2.4 Such neighborhood school assignments would result in approximately eight elementary schools and one junior high school being racially imbalanced. All students in such racially imbalanced neighborhood schools would be immediately reassigned to the remaining nineteen elementary schools and three junior high schools in a manner such that all remaining neighborhood schools are racially balanced. Necessary busing would be provided by the school district. Sufficient school capacity exists to handle such a one-way busing plan even in the worst case "analysis." (see Exhibit I)

2.5 All Black students assigned to the resulting racially balanced neighborhood schools in predominantly White neighborhoods would have the right to exercise a special reassignment privilege to neighborhood schools in the Black community. Such Black community neighborhood schools would be placed in a new school sub-district under the authority of the present Board of Education, but controlled and governed to the greatest degree possible by the Black community. An equitable pro-rata share of school resources would be allocated to the Black community schools.

2.6 All non-Black students attending racially balanced neighborhood schools would have the privilege of attending Black community schools with district-provided transportation. The result would be a system where all students would have the option of attending either racially balanced schools in predominantly White neighborhoods or predominantly Black schools in Black neighborhoods. *All* children would have the right to attend neighborhood schools, but no White students would have the right to attend a non-integrated school.

2.7 The school district would create a yet to be determined number of "magnet" elementary schools designed to provide innovative, remedial, and enrichment curriculum for students from both Black community schools and racially balanced schools. The objective would be to provide shared inter-racial educational experiences by drawing students from all schools on a periodic basis. In time such "magnet" schools would also encompass various full-time alternative schools designed to voluntarily attract a racially balanced student body.

2.8 Following the first year of implementation and the resultant "settling" of pupil attendance, opportunity would be afforded the Mexican American community to voluntarily transfer students from racially balanced neighborhood schools to a predominantly Mexican American elementary school. Such a school would be considered part of a second newly formed sub-district under the authority of the Board of Education, but controlled and governed to the greatest degree possible by the Mexican American community.

2.9 With respect to high schools, the New Pasadena Plan would retain boundary lines as presently established. However, all Black students presently attending

Pasadena High School and Blair High School would have the right to exercise a special privilege to be reassigned to Muir High School. At such time that Muir High School, by such voluntary Black student transfers, became over 60% Black, Muir would be transferred to the Black community school sub-district. At such point *all* students normally assigned to Muir would have the right of being assigned to Pasadena High School and Blair High School in such manner that each of these two schools would maintain a racially balanced enrollment.

3.0 *Formation of Black Community Sub-District.*

The proposed plan provides Black parents the right to have their children attend predominantly Black schools in the Black community if they voluntarily choose to do so. This "right" is meaningless unless Black parents can be absolutely certain such predominantly Black schools will receive equitable distribution of school resources and truly provide for the special educational needs of Black children as the Black community sees these special needs.

In order to provide such guarantee, it is proposed that all predominantly Black schools which derive from voluntary decisions of Black parents be placed under the authority of a newly formed sub-district which would generally encompass the following basic features:

3.1 The sub-district would be ultimately responsible to the present Board of Education in accordance with present laws.

3.2 The sub-district would be directly governed by a sub-district school board comprised of three to five members. Members of the sub-district school board would be chosen by the Black community, subject to approval of the present school board. The sub-district

school board would determine the organization for running the sub-district, including the possibility of a separate sub-district superintendent.

3.3 School resources would be allocated to the sub-district on a pro-rata basis proportional to the number of students in the sub-district. The sub-district would be independently free to obtain special funding for its own special programs.

4.0 *Advantages of the New Pasadena Plan.*

The New Pasadena Plan must not be evaluated in the abstract but as an alternative to overcoming the failures of the present plan. It is submitted that based on such comparison, the advantages of the New Pasadena Plan are:

4.1 White exodus will be ameliorated. The most important cause of White exodus is busing of children away from White neighborhood schools, not opposition to integrated schools. *Integration can be made to work under the New Pasadena Plan.*

4.2 Black parents will be afforded freedom of choice and viable alternatives not available under the present Pasadena Plan. For example, Black students would be free to attend Black neighborhood schools in lower elementary grades, a choice not available under the present Pasadena Plan. Further, Black parents will gain a presently unavailable alternative—the right to send their children to predominantly Black schools featuring special curriculum needs as determined by Black parents.

4.3 The New Pasadena Plan will result in a substantial reduction of transportation costs estimated to be as much as $250,000 to $400,000. The new plan will also work hand in hand with current plans to optimize school loading, thereby relieving future budgets of

disproportionate fixed costs which currently penalize expenditures directly related to education.

4.4 The New Pasadena Plan maximizes the possibility of being permissible under present law. Basically, all students will attend racially balanced schools in accordance with the present Federal court mandate unless students *voluntarily* opted to attend predominantly Black schools. I am advised by legal counsel there is high probability the courts would not deny racially imbalanced schools which resulted entirely from voluntary decisions of minority parents.

4.5 The New Pasadena Plan will be a markedly new approach to school desegregation generally in concert with the position of the Nixon Administration. It is believed Federal assistance is relatively assured to finance the start-up costs of the new plan.

4.6 Black community schools will provide a new opportunity by which to attack the perplexing problem of increasing achievement of minority children. Black authority will provide a viable mechanism to promote Black responsibility. To the extent voluntary Black transfers to Black community schools take place, the percentage of minority students in racially balanced neighborhood schools will be decreased. This will in turn increase the probability of greater educational achievement for *both* minority group and White children in the racially balanced schools.

5.0 *Implementing the New Pasadena Plan.*

It is recommended the Board of Education take the following action on the New Pasadena Plan.

5.1 Immediate decision to consider the New Pasadena Plan as a potential alternative to the present Pasadena Plan.

5.2 Immediate formation of a special District Committee to report a detailed analysis of the New Pasadena Plan and a preliminary detailed plan of implementation for the 1972-73 school year, such report to be presented to the Board of Education no later than December 31, 1971.

5.3 Immediate formation of a joint Board of Education-Pasadena City Board Committee to design and implement a concentrated action effort for the purpose of stabilizing the community. The need for such joint concentrated action derives from the fact that both city action and school action in this area are completely interdependent, and we cannot succeed in achieving a stabilized integrated school system unless we at the same time achieve a stabilized integrated community.

6.0 *Conclusion.*

I wish to express my deep and sincere appreciation to the Board of Education for the opportunity to present the New Pasadena Plan.

More than all else, I sincerely believe the new plan will re-unite our sorely divided community. Without the consensus of support that derives from such union, any plan is doomed to eventual failure.

To those Board members and others who would be tempted to reject the New Pasadena Plan out of hand, I plead for understanding. Ask yourself whether the cause of integration will not in fact be furthered under the new plan. Ask yourself whether we are in fact ready to grant our minorities the right of self-determination. Ask yourself whether we are willing to forget the ugliness of past differences in order to work together, hand in hand, toward new solutions.

Let us not fail to remember that our present situation, though fraught with problems and frustration, is a momentous opportunity. If we here together can forge a viable alternative to forced integration of our schools, not only will we have best served our school system and our community, but we will have helped preserve a free society.

Such is our challenge. I pray that we will face it, as I know we will, with courage, objectivity and determination.

Thank you.

Exhibit I.

Assuming implementation of the New Pasadena Plan, a primary question is that of elementary and junior high school loading. This analysis assumes the worst case, that is, all pupils initially assigned to racially imbalanced neighborhood schools are accommodated in the remaining schools. All calculations are conservatively based on 1971-72 enrollment. Further drop in enrollment would ease the loading problem.

Elementary Schools.

In October, 1969, 5,393 elementary school children were Black. In October, 1971, the number of Black elementary students was 5,397, an increase of only four students. It is therefore reasonable to assume that initial assignment of all elementary students to neighborhood schools would produce the same general pattern of imbalanced schools that existed in 1969, namely:

School	No. of Blacks	% Black
Audubon	386	63.5
Cleveland	528	97.4
Edison	374	59.4
Franklin	493	82.7
Jackson	534	82.4
Lincon	672	83.9
Madison	546	63.8
Washington	1,060	91.5
	4,593	78.7

The New Pasadena Plan contemplates reassigning *all* students from the above eight schools to the remaining nineteen elementary schools. Inasmuch as total elementary enrollment in 1971-72 was 14,082 students, average enrollment for each of the remaining nineteen elementary schools would be 741 pupils. This is considered reasonably within the limits established by the office of the Superintendent as optimal K-6 school loading. The loading would, of course, be lessened by further drops in school enrollment and/or by those Black students opting for re-transfer to a Black neighborhood school.

Assuming various percentages of Black children voluntarily deciding to attend Black neighborhood schools, the following relationships result based on current enrollment:

Percent Black students opting for Black schools	20%	30%	40%
Black students in Black schools	1,080	1,890	2,700
Number of Black schools	2	3	4
Total pupils in balanced schools	13,002	12,192	11,382
Percent Anglo-Caucasians in balanced schools	50.2%	53.5%	57.3%

It is significant that with only 20% of Black elementary students opting for predominantly Black schools, the Anglo-Caucasian mix in elementary schools increases to over 50%.

Junior High Schools

Implementation of the New Pasadena Plan would result in an initial assignment pattern producing imbalanced attendance at Washington Junior High School. All Washington Junior High School students would then be reassigned to McKinley, Wilson and Eliot. Since total enrollment for 7th and 8th grades is now 4,242 students, average junior high school enrollment over these schools would be 1,417 students. This is considered reasonably within the limits established by the office of the Superintendent as optimal junior high school loading. This loading would be reduced in proportion to further reduction from the present enrollment and/or the number of Black students opting for reassignment to Washington Junior High School.

PLAINTIFFS' EXHIBIT XIX.

Minutes of the Special Meeting — Page No.
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* * * * *

Page No. 18,417

Mr. Saul Glickman to Mr. Marcheschi

Question: 1. Your proposed modification allows students and parents a choice of attending any school within a particular zone. If all the students living in the neighborhood around Sierra Mesa choose that neighborhood school and that enrollment equalled the capacity, how do you plan to accommodate

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a student living in the Audubon neighborhood who chooses to enroll at Sierra Mesa?

Answer: Mr. Marcheschi referred to his earlier comments regarding this and added that even with rooms allocated for special purposes, there still would be rooms available at Sierra Mesa for all children who chose to go there and he added that the use of transportables should not be discounted.

Question: 2. Have you requested or received anonymous input from the K-6 principals relative to the educational preference between the present K-3, 4-6 structure and the proposed K-6 alignment?

Answer: He said he had not received anonymous input, but he believed he was quite aware of the sentiments of principals in this respect.

Question: 3. If we are permitted to proceed with your modification of the Pasadena Plan, could there be segregated schools

Answer: He said absolutely not, adding that his definition of segregated schools is a school where children are assigned and next year?

forced to go to that school because of race and in the proposed modifications, there will be schools which may be necessarily imbalanced, but the imbalances will result from voluntary actions of parents in spite of the fact that the school district is providing every conceivable incentive to achieve racial balance.

Dr. Myers, Mr. Newton and Dr. Vetterli answered "No" to Mr. Lowe's question: "My perception of your own feelings is that you support the new proposal as a compromise between what we now have and what you'd prefer; that if you had your choice you'd pick a N. S. system based on proximity. Right?"

The Superintendent stated he would be responding to the questions addressed to him and members of the staff by Mr. Glickman and proceeded to answer those addressed to Mr. Hagen as follows:

Question: 1. You have reported to the Board and the public that, for example, in Zone A of the proposed modification the student enrollment as of October 5 was 3,075 and the total capacity was 4,550. Did you include library rooms, opportunity rooms, and other special rooms in the unoccupied category?

Answer: Mr. Hagen will be releasing at next week's Board meeting his capacity report for all primary and elementary buildings, and he has taken into consideration the library and special purpose rooms. For example, each school has been allocated four unassigned rooms for this purpose and any other purpose that the principal and staff might designate.

Question: 2 You gave us the total enrollment and total capacity for each zone. Do you have a breakdown of the individual school enrollments and capacities?

Answer: At the meeting on January 22, Mr. Hagen and staff will be discussing consolidation, closing and capacity of schools, and at that time he will be giving this particular data for all of the schools.

Question: 3. During your forty hour work week could you give us a "within ballpark" estimate of the number of hours you have spent providing the school Board and their attorneys with information relative to the proposed modification and the suits they have filed in Judge Real's court?

Answer: Within a ballpark figure, Mr. Hagen has spent approximately ½ day per week since December 1.

Superintendent Cortines then proceeded to answer questions directed to him by Mr. Glickman:

Question: 1. During the many years that I have known you both as a colleague and educational leader you have been a very strong advocate of totally integrated schools, have you not?

Answer: Yes.

Question: 2. Are you currently just as strong an advocate of totally integrated schools?

Answer: Yes.

Question: 3. Do you think that under the proposed modification of the Pasadena Plan our schools will be able to have the same level of integrated education as we have under the current plan?

Answer: No.

Question: 4. Could you please elaborate—why not? Will there be some all Black schools and all White schools?

Answer: He said he believed Mr. Marcheschi had answered this—that each parent had freedom of choice and believed some schools which are in predominantly Black or White neighborhoods will reflect the neighborhood through the choice of the parent.

Question: 5. The proposed modification anticipates many shifts of students in the schools. The current plan allows for the kind of saturation that makes us eligible for a compensatory

education program. How would the proposed modification affect our compensatory education program?

Answer: He believed that it completely changed the schools designated for these programs based on AFDC (Assistance to Families of Disadvantaged Children) counts. He added that presently there are eight primary and approximately four elementary schools which do not currently have this program. Under the proposed modifications, based on this particular count, it would redesignate certain schools as compensatory schools which are eligible for this program.

Question: 6. As administrative leader of the school district you have had numerous meetings with your cabinet, administrative staff and principals of K-6. Could you share with us their general view of K-3, 4-6 alignment as opposed to the proposed change to K-6?

Answer: Mr. Cortines replied that the majority of his cabinet preferred K-3, 4-6, a few K-5, and some are not sure. However, principals have informed him that they feel very comfortable with the K-3, 4-6 structure at the present time.

DEFENDANTS' EXHIBIT XXI IS MISSING.

DEFENDANTS' EXHIBIT G.

PASADENA UNIFIED SCHOOL DISTRICT.

	1970/71	1971/72	1972/73	1973/74
Primary Schools				
Allendale	#	#	#	#
Audubon			#	#
Burbank				
Don Benito			#	#
Franklin	#	#	§	§
Hamilton			#	#
Jefferson				
Linda Vista				
Noyes			#	#
San Refael				#
Sierra Madre				
Sierra Mesa			§	§
Webster				
Willard				
Elementary Schools				
Altadena				#
Cleveland			#	#
Edison			§	§
Field				
Hale				
Jackson				
Lincoln	#	#	#	#
Loma Alta		§	§	§
Longfellow				#
Madison				#
Washington				#

Junior High Schools				
Eliot			#	§
McKinley				#
Washington			#	#
Wislon				#
	1970/71	1971/72	1972/73	1973/74
Senior High Schools				
Blair				
Muir				
PHS				#
Total Schools	3	4	12	21

#=Negro enrollment greater than Anglo-Caucasian enrollment.

§=Negro enrollment at least 50% of student body.

DEFENDANTS' EXHIBIT N.

NEIGHBORHOOD SCHOOL/INTEGRATED ZONE PLAN FOR GRADES K-6

A Proposed Plan to Restore Neighborhood Schools,

Promote Voluntary Integration,

Achieve Equality of Educational Opportunity

and Racially Stabilize the

Pasadena Unified School District

by

H. Marcheschi, Member

Board of Education

Pasadena Unified School District

Pasadena, California

January 9, 1973

PROPOSED AMENDMENT TO CHARTER OF CITY OF PASADENA.

The Charter of the City of Pasadena is hereby amended by adding the following:

Section 713. Equal Educational Opportunity and Assignment of Pupils

The Board of Education of the Pasadena Unified School District shall, commencing on July 2, 1973, formulate, implement and thereafter maintain a plan for providing equal educational opportunity and for assigning pupils which will be in accordance with the following policies:

(1) All students enrolled in public schools operated by the Pasadena Unified School District will be provided equal educational opportunity without regard to race, color or national origin; and

(2) Students will be assigned to public schools and within the classrooms of the schools without regard to race, color or national origin but this shall not require assignment of students in order to overcome racial imbalance; and

(3) The neighborhood is an appropriate basis for determining public school assignments and no student shall be denied the opportunity to attend his neighborhood school should his parents or guardians so desire; and

(4) A balance of students on the basis of race, color or national origin among the schools of the school district and within the classrooms of the schools will be encouraged and facilitated to the maximum degree possible, but failure to attain a balance shall not constitute a denial of equal educational opportunity, or equal protection of the laws.

(5) For the purposes of this section, "neighborhood school" is defined as:

> "The school closest to any particular student's place of residence which provides the appropriate grade level and type of education for such student, taking into account school capacities and natural physical barriers."

Neighborhood School/Integrated Zone Plan for Grades K-6.

1.0 Foreword.

The plan is based on adoption of the following policies by the Board of Education.

1.1 All students enrolled in public schools operated by the Pasadena Unified School District will be provided equal educational opportunity without regard to race, color or national origin; and

1.2 Students will be assigned to public schools and within such schools without regard to race, color or national origin, but this shall not require assignment of students to public schools and within such schools in order to overcome imbalance; and

1.3 The neighborhood is an appropriate basis for determining public school assignments and no student shall be denied the opportunity to attend his neighborhood school should his parents or guardians so desire; and

1.4 A balance of students on the basis of race, color or national origin among the schools of the school district and within the schools will be encouraged and facilitated to the maximum degree possible, but failure to achieve such balance shall not, in and of itself, constitute a denial of equal educational opportunity.

1.5 For the purposes of this section, "neighborhood school" is defined as:

> "The school closest to any particular student's place of residence which provides the appropriate grade level and type of education for such student, taking into account school capacities and natural physical barriers."

2.0 Elements of the New Plan

2.1 All schools now constituted as K-3 and 4-6 schools shall be reconstituted as K-6 schools.

2.2 The resulting twenty-five K-6 schools shall be divided into four zones, each zone consisting of neighborhood school attendance areas such that the ethnic makeup of each zone approximates the ethnic makeup of the school district as a whole.

2.3 Each zone shall contain, to the greatest degree possible, the feeder and receiving schools now coupled in the existing Pasadena Plan.

2.4 Each student shall have the right to attend either his neighborhood school or any of the other K-6 schools in his zone.

2.5 The school district shall provide maximum incentive to achieve voluntary racial balance in each school of the school zone. Such incentives shall include, but not be limited to:

2.5.1 District-provided transportation.

2.5.3 Magnet schools.

2.5.3 Special programs offered only at certain schools.

2.5.4 Shared inter-racial educational experiences between schools.

3.0 Application Example

3.1 Exhibits 1 through 6 illustrate one of many possible constructions of the proposed plan based on neighborhood assignment areas as they existed immediately prior to implementation of the Pasadena Plan. This construction should not be necessarily considered optimal. It is presented primarily for purposes of illustration.

3.2 Exhibits 1 and 2 illustrate neighborhood school boundaries as they existed before the Pasadena Plan and how these schools would be assigned to one of four zones. Exhibits 3 through 6 tabulate the four groups of schools, with associated ethnic enrollment data for each group, as well as for each of the schools comprising the groups. The enrollment data is based on data supplied by the District's Office of Planning, Research and Development, wherein were computed the number of students of each ethnic category based on present enrollment who would be attending these schools if they were reconstituted as K-6 systems with neighborhood attendance boundaries as they existed in 1969-70, immediately prior to implementation of the Pasadena Plan. An acceptable variable in optimizing the new plan is minor changes in neighborhood school boundaries.

3.3 Atention is invited to the following aspects of the illustration:

3.3.1 Considerable amount of unused capacity exists in each of the four zones.

3.3.2 Major concentrations of under-enrollment are in predominantly white neighborhoods, thereby assuring adequate capacity for voluntary transfer of non-white students.

3.3.3 Limitation of transfer privilege only to those schools in any one zone facilitates providing transportation at district expense at a cost well within present expenditures.

3.3.4 The geographical makeup of each zone provides at least one centrally located school to serve as a magnet school.

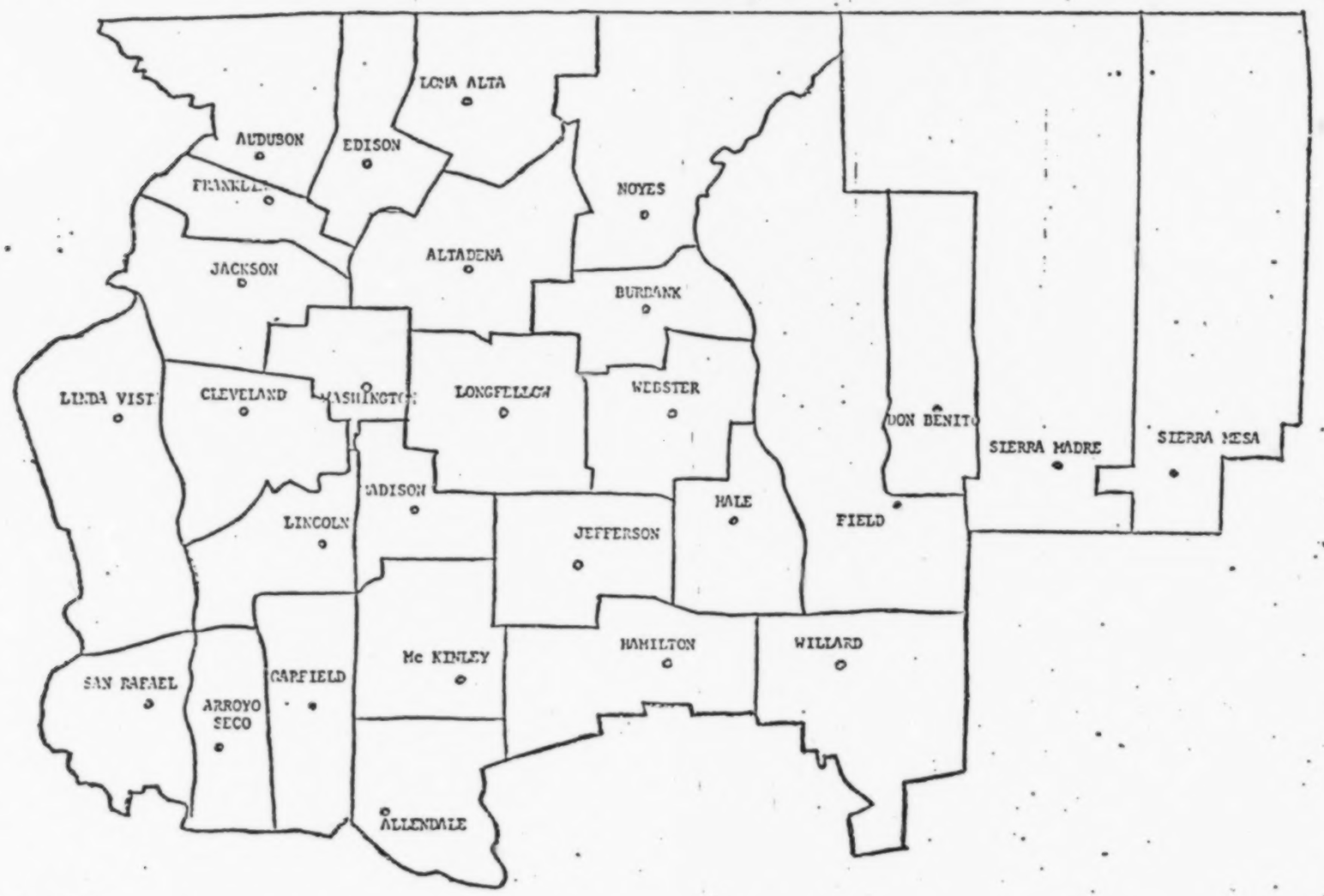
3.3.5 With minor exception, each feeder and receiving school presently coupled in the Pasa-

dena Plan are contained in the same zone. This encourages students to remain in their present schools and allows implementation of the new plan with practically *no* mandatory reassignment of pupils.

3.3.6 The zone plan is completely compatible to the new organizational plan of the district.

4.0 Legal Considerations.

The Neighborhood School/Integrated Zone Plan has been extensively reviewed with private legal counsel and other government and non-government authorities who have advised there is no constitutional obstacle, under Supreme Court decisions, that would stand in the way of the Federal District Court permitting implementation of this plan.


LONA ALTA
AUDUBON
EDISON
FRANKLIN
NOYES
JACKSON
ALTADENA
BURBANK
LINDA VISTA
CLEVELAND
WASHINGTON
LONGFELLOW
WEBSTER
DON BENITO
SIERRA MADRE
SIERRA MESA
MADISON
LINCOLN
JEFFERSON
HALE
FIELD
McKINLEY
HAMILTON
WILLARD
SAN RAFAEL
ARROYO SECO
GARFIELD
ALLENDALE

ILLUSTRATIVE ZONE BOUNDARIES

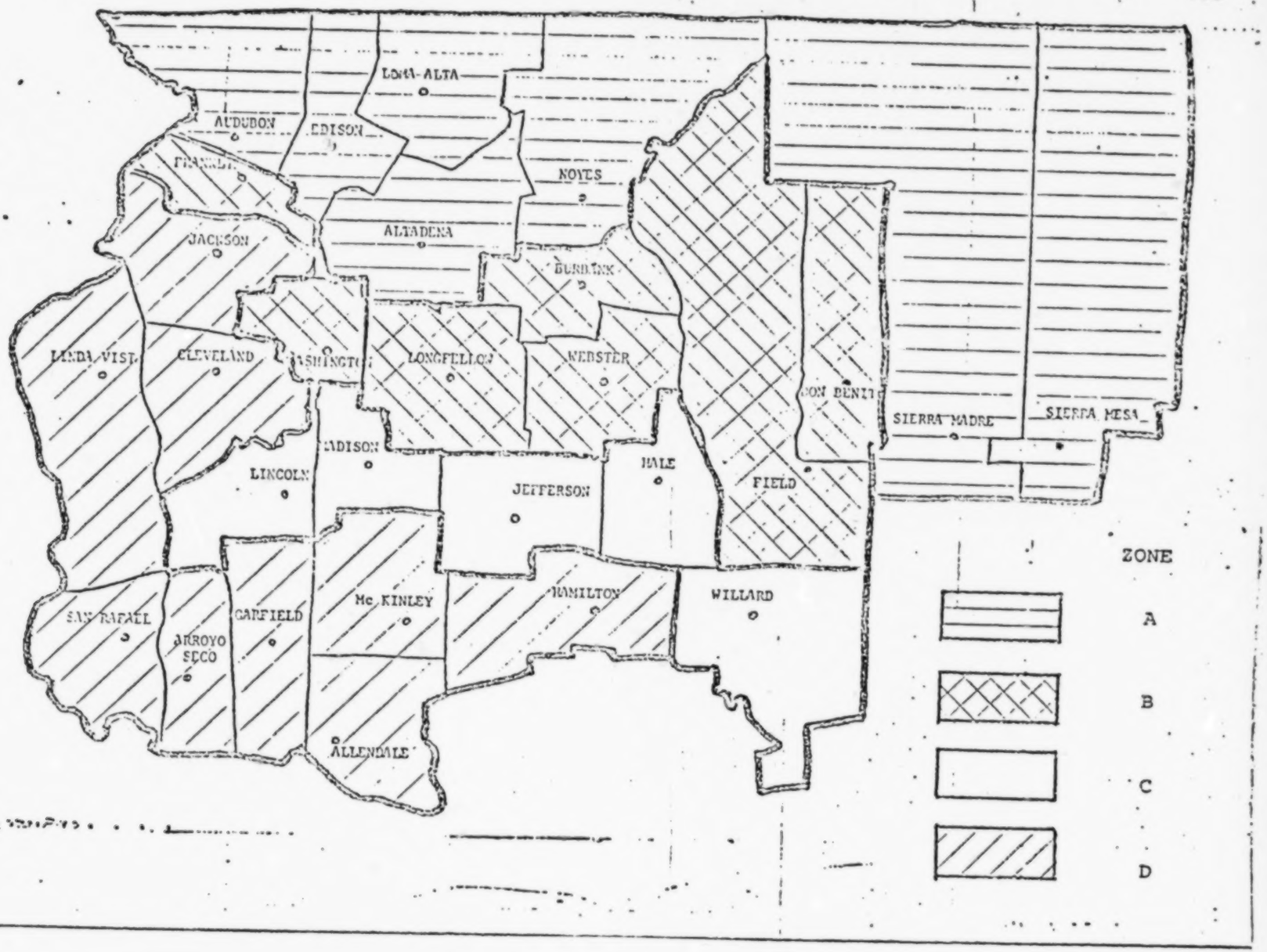


EXHIBIT 3

NEIGHBORHOOD SCHOOL/INTEGRATED ZONE PLAN
ZONE A

Schools	Caucasian	Negro	Spanish-Surname	Others	Total	School Capacity
Audubon	56	403	18	18	495	640
Noyes	184	30	5	12	231	470
Sierra Madre	337	1	33	15	386	760
Sierra Mesa	201	2	11	5	219	550
Altadena	374	311	77	36	797	840
Edison	155	499	40	8	703	680
Loma Alta	177	258	25	12	472	610
Group enrollment	1,484	1,504	209	106	3,303	4,550
Enrollment percentage	44.9%	45.5%	6.3%	3.2%		

Total zone enrollment as percentage of zone school capacity: 72.6%

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EXHIBIT 4

NEIGHBORHOOD SCHOOL/INTEGRATED ZONE PLAN
ZONE B

Schools	Caucasian	Negro	Spanish-Surname	Others	Total	School Capacity
Burbank	326	16	35	6	383	640
Don Benito	283	3	5	5	297	780
Franklin	76	445	37	12	570	670
Webster	466	19	27	20	532	910
Washington	52	768	69	14	902	900
Longfellow	436	224	145	59	864	990
Field	283	5	44	8	340	700
Group enrollment	1,922	1,480	362	124	3,888	5,590
Enrollment percentage	49.4%	38.1%	9.3%	3.2%		

Total zone enrollment as percentage of zone school capacity: 69.6%

EXHIBIT 5

NEIGHBORHOOD SCHOOL/INTEGRATED ZONE PLAN
ZONE C

Schools	Caucasian	Negro	Spanish-Surname	Others	Total	School Capacity
Jefferson	410	78	238	62	788	1,120
Willard	345	2	94	16	457	1,020
Madison	185	668	286	24	1,163	850
Hale	258	5	42	20	325	760
Lincoln	31	510	77	4	622	1,050
Group enrollment	1,229	1,263	737	126	3,355	4,800
Enrollment percentage	36.6%	37.6%	22.0%	3.8%		

Total zone enrollment as percentage of zone school capacity: 69.9%

EXHIBIT 6

NEIGHBORHOOD SCHOOL/INTEGRATED ZONE PLAN
ZONE D

Schools	Caucasian	Negro	Spanish-Surname	Others	Total	School Capacity
Hamilton	341	9	108	51	509	690
Allendale	205	2	50	19	276	560
Linda Vista	127	2	5	7	141	410
San Rafael	179	4	5	12	200	460
Cleveland	16	542	19	2	579	610
Jackson	15	484	31	27	557	820
*McKinley	95	23	46	15	179	260
*Garfield	110	14	91	6	221	410
Group enrollment	1,088	1,080	355	139	2,662	4,220
Enrollment percentage	40.9%	40.6%	13.3%	5.2%		

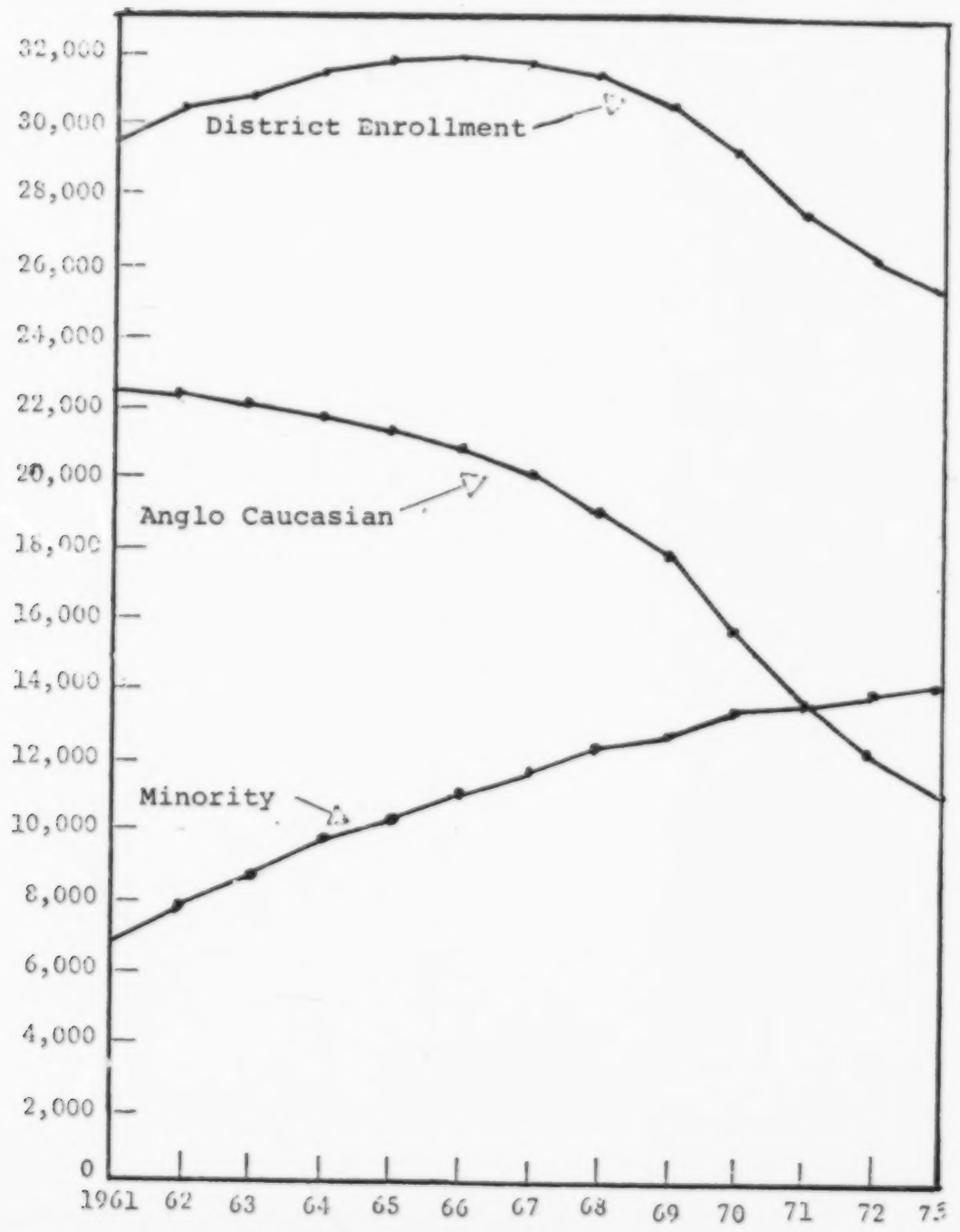
Total zone enrollment as percentage of zone school capacity: 63.1%

*These schools are presently closed, and their neighborhood school populations are currently attending other schools in Zone D.

DEFENDANTS' EXHIBIT AD

FIGURE 3

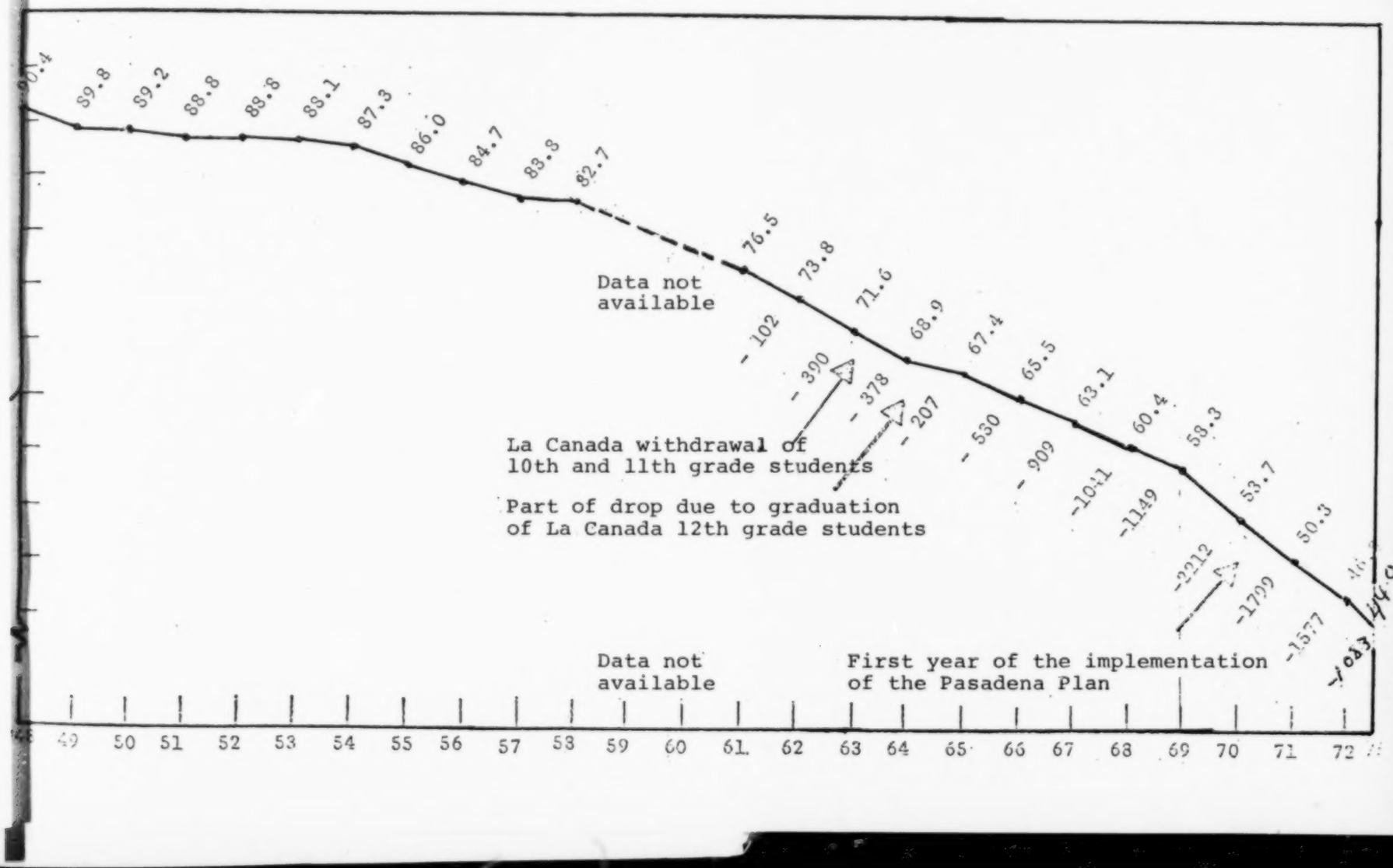
YEARLY ENROLLMENT OF THE PASADENA UNIFIED SCHOOL DISTRICT
SHOWING TOTAL DISTRICT ENROLLMENT, NUMBER OF ANGLO CAUCASIAN STUDENTS
AND NUMBER OF MINORITY STUDENTS
1961-62 THROUGH 1972-73



DEFENDANTS' EXHIBIT AE

PASADENA UNIFIED SCHOOL DISTRICT
DEPARTMENT OF PLANNING, RESEARCH AND DEVELOPMENT
OCTOBER 31, 1972

FIGURE 2. - PERCENT OF ANGLO CAUCASIAN STUDENTS BY YEARS
(The difference in number of Anglo Caucasian students
for each successive year is shown below the curve)



602

PLAINTIFFS' EXHIBIT XXI.

Minutes of the Regular Meeting — Page No.
July 31, 1973 — 18,182

* * * * *

Board Report 42-P.

Appointment of Personnel-Certificated.

The Superintendent noted that under the Board adopted personnel policies, he, as Superintendent, has the right to recommend to the Board acting administrative appointments for not more than one year; however, in these particular recommendations appointing Dr. John M. Kellner as Acting Principal of the Fundamental School, and Mrs. E. Louise Coover as Acting Principal of Wilson Junior High School, he again reiterated that he had already established the dates when the selection procedure will begin in January and a permanent recommendation by February 1st.

Mr. Sheats recalled that after the regular meeting on July 10, 1973, an executive session was held to discuss the appointment of Mrs. Coover. At that time, he had agreed to her acting appointment; however, after reassessing the situation, he finds that he was in error because the Pasadena Plan provides very clearly and definitely how administrative appointments are to be made, and believed this procedure was not being followed. He stated that he does not recall that any notices were circularized with reference to these positions, adding that he knows of no acting position that has not become permanent.

Minutes of the Regular Meeting
July 31, 1973

Page No.
18,183

Motion and Action
Board Report 42-P.

On motion of Dr. Vetterli, seconded by Dr. Myers, and by a vote of 3-1 of the four members present of the five member Board, with Mr. Sheats voting "Nay" for reasons as raised during the discussion, Board Report 42-P was approved and made the action of the Board.

Administrative Appointments Under Pasadena Plan.

Mr. Sheats read a statement dated July 31, 1973, a copy of which is attached, in which he pointed out that his obligation to the appointments of three top administrators at the Board meeting of July 10, 1973, was not based on personalities involved, but the rationale for making these appointments, which was to reorganize this district and in that process place positions of leadership with persons whose philosophies were compatible with the present Board. In his statement, he reiterated that this action was illegal under the Brown Act because he believed deliberation on these appointments was not conducted in a public meeting. Also, it did not follow the Pasadena Plan's recruitment and assignment to reduce racial segregation in the district and, especially, encourage minority candidates.

Mr. Marcheschi stated that because of the seriousness of Mr. Sheats' questions raised previously in the press, he and the Superintendent had met with County Counsel, at which time the question was raised as to whether or not the three appointments violated the court order of the Spangler case. He stated that County Counsel, after reviewing the documents on the case, rendered the opinion that the action of the Board did not violate the court order of the Spangler case.

During the discussion, Mr. Marcheschi touched on the executive session at which time Mr. Sheats' appointment was consummated. Mr. Sheats said that his appointment was not being questioned at this time, and, further, that he did not believe the County Counsel opinion to be persausive to him, as an attorney.
Motion.

Rescinding Action of Administrative Appointments

Mr. Sheats moved that in view of the fact that there is very serious probability that these appointments violate the Pasadena Plan, that these appointments be rescinded. The motion was lost for want of a second.

Dr. Myers referred to Mr. Marcheschi's reference to an executive session at which time Mr. Sheats was appointed, and requested completion of that incident, if not at this meeting at some future date, because it appeared to him that some sort of precedent was established at that time. Dr. Vetterli concurred with this request. Mr. Marcheschi replied that there would be no discussion on that subject tonight.

STATEMENT OF SAMUEL C. SHEATS
TO THE PASADENA SCHOOL BOARD
JULY 31, 1973

Mr. Marcheschi and other Board Members:

On July 10, when a majority of this Board announced its intention to appoint three people to top administrative posts, I strongly urged that these appointments not be made. I indicated that my opposition was not based on the personalities involved, but that it was to the rationale for making these appointments.

As I understand it, that rationale was that the majority of this Board wished to reorganize this District, in the process of which you wished to place in positions of leadership persons whose philosophies were compatible with yours.

You may remember that I objected that what a majority of the Board proposed was probably illegal under the Ralph Brown Act, which requires this Board to conduct its business in public. I denied this Board could have conducted its deliberations regarding the reorganization and appointments in public, since between July 2, 1973, when three members of this Board took oaths of office, and July 10, when the reorganization and appointments were announced and adopted, no public meeting was held for such purpose.

While I would reiterate to you tonight I still think the action of the majority of the Board on July 10 was illegal under the Brown Act, such reiteration is not my primary purpose for making this statement to you. What I now urge is that there is an even more compelling legal reason—one I wasn't aware of on July 10—for you to rescind the administrative appointments you made July 10. That reason is that these appointments were made in violation of the Pasadena Plan, which this school district is legally obligated to follow and abide by.

Specifically, the Pasadena Plan provides "for the assignment, hiring and promotion of teachers and other professional staff

members in such manner as to reduce racial segregation throughout the District." (page 37) Moreover, the PP expressly provides for the recruitment and selection of administrators. At page 46 it provides:

> "Vacancies in these (administrative) positions are filled from eligible lists established by examination . . .
>
> ". . . Announcements for these positions are distributed to all school personnel, . . . and to a mailing list recommended by the Department of Intergroup Education which includes agencies and districts where minority personnel may be available."
>
> "When vacancies occur, the top five names on the eligible list are referred to the appointing authority for consideration. All appointments must be approved by the Superintendent.
>
> "A positive recruitment program paralleling the teacher recruitment program will actively seek out minority group administrators, supervisors, and counselors who are interested in employment with the Pasadena Unified School District. . . . Minori-candidates will be especially encouraged to apply."

It is obvious that none of these provisions of the Pasadena Plan was complied with. Moreover, none of the administrators selected by this Board on July 10 is a member of a minority group, and so failure to comply with the Pasadena Plan cannot be said to have been an inconsequential error.

In light of this, it is clear that this Board ought to immediately rectify the error it made in appointing the administrators on July 10, by rescinding those appointments right now. Failure to act in this way may, and indeed is likely to, subject the Board to the necessity of defending a legal action which may be brought by any one or more of a number of persons who have been aggrieved by this Board's wrongful administrative appointments.

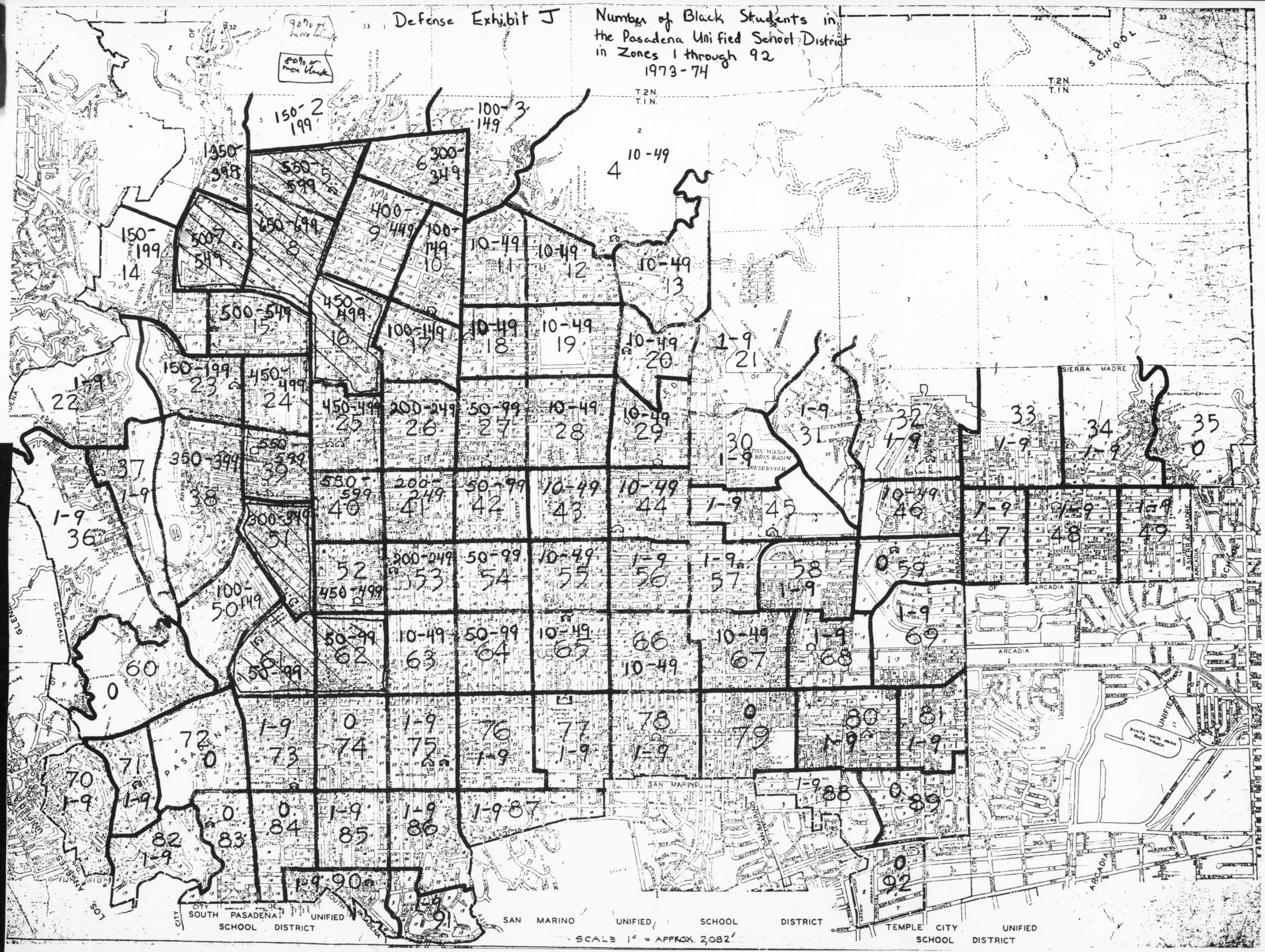
OVERSIZE FOLDOUT(S) FOUND HERE IN THE PRINTED EDITION OF THIS VOLUME ARE FOUND FOLLOWING THE LAST PAGE OF TEXT IN THIS MICROFICHE EDITION.

SEE NO 1 + 2

1

Defense Exhibit J

Number of Black Students in the Pasadena Unified School District in Zones 1 through 92
1973-74

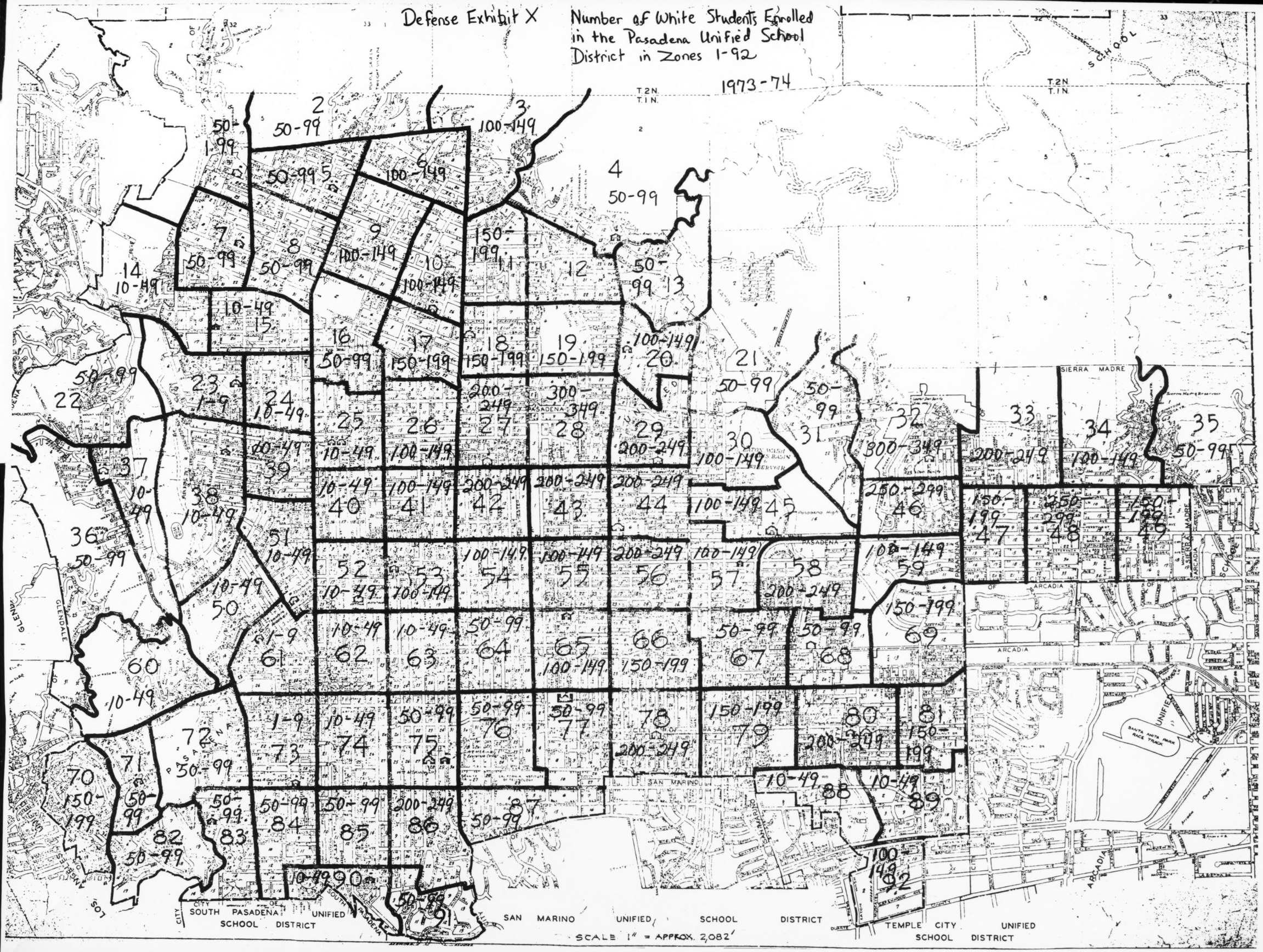


2

Defense Exhibit X

Number of White Students Enrolled in the Pasadena Unified School District in Zones 1-92

1973-74



Supreme Court, U. S.
FILED
SEP 29 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-164

PASADENA CITY BOARD OF EDUCATION, ET AL.,
Petitioners,

vs.

NANCY ANNE SPANGLER, ET AL.,
Respondents,

and

UNITED STATES OF AMERICA,
Respondent.

MEMORANDUM OF PETITIONERS SUGGESTING THAT THE CAUSE IS MOOT.

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ROBERT G. LANE,
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Of Counsel.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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MEMORANDUM OF PETITIONERS SUGGESTING THAT THE CAUSE IS MOOT.

In light of this Court's decision in *Board of School Commissioners of Indianapolis* v. *Jacobs,* 420 U.S. 128 (1975), Petitioners feel it incumbent on them to point out that this case may be moot.

Here, as in the *Jacobs* case, the named parties plaintiff have been graduated. (See Appendix A, hereto, Affidavit of Ramon C. Cortines, Superintendent of Schools for the Pasadena Unified School District.) Here, as in *Jacobs*, there has been no compliance with the requirements of Rule 23(c) of the Federal Rules of Civil Procedure. (See Appendix B, hereto, Affidavit of Lee G. Paul, Attorney for Petitioners.) The reasoning of this Court in the *Jacobs* case is, thus, equally applicable to this one:

> The only formal entry made by the District Court below purporting to certify this case as a class action is contained in that court's "Entry on Motion for Permanent Injunction," wherein the court "conclude[d] and ordered" that "the remaining named plaintiffs are qualified as representatives of the class whose interest they seek to protect." 349 F. Supp. at 611. No other effort was made to identify the class or to certify the class action as contemplated by Rule 23(c)(1); nor does the quoted language comply with the requirement of Rule 23(c)(3) that "[t]he judgment in an action maintained as a class action under subdivision . . . (b)(2) . . . shall include and describe those whom the court finds to be members of the class." The need for definition of the class purported to be represented by the named plaintiffs is especially important in cases like this one where the litigation is likely to become moot as to the initial named plaintiffs prior to the exhaustion of appellate review. Because the class action was never properly certified nor the class properly identified by the District Court, the judgment of the Court of Appeals is vacated and the case is remanded to that court with instructions to order the District Court to vacate its judgment and dismiss the Complaint. [420 U.S. at 129-130.]

"In the complaint originally filed in this action Plaintiffs and Respondents Nancy Anne Spangler, Judith R. Clarke and Vivion Rostker allege that said action was brought on behalf of themselves and "all others similarly situated". Nevertheless, I am aware of no testimony, evidence or orders in said action relating to the identification of said plaintiffs as a class. I am further aware of no orders in the files of said action that purport to comply with the

> requirements of Rule 23 of the Federal Rules of Civil Procedure relating to the identification of a class of plaintiffs." (Affidavit of Lee G. Paul, App. B.)

Should this Court find that this case, like the *Jacobs* case, is moot, the judgments of the courts below should be vacated and the action should be dismissed.

Respectfully submitted,

LEE G. PAUL,
PETER D. COLLISON,
ROBERT G. LANE,
PAUL, HASTINGS & JANOFSKY,
555 South Flower Street,
Los Angeles, California 90017,
Attorneys for Petitioners.

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ALAN L. UNIKEL,
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Two First National Plaza,
Chicago, Illinois 60603,
(312/372-2345),
Of Counsel.

APPENDIX A.

(Original filed in the office of the Clerk)

AFFIDAVIT OF RAMON C. CORTINES.

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } ss.

I, Ramon C. Cortines, being first duly sworn, say:

1. I am the Superintendent of Schools for the Pasadena Unified School District. In such capacity I have access to and control over the records of said School District, including all records showing the attendance and performance of Nancy Anne Spangler, Judith R. Clarke and Vivion Rostker while they were enrolled at schools in said School District. To my knowledge, these three individuals are the only persons named as plaintiffs in the action entitled *Spangler* v. *Pasadena City Board of Education.*

2. Said records reflect that Nancy Anne Spangler was graduated from John Muir High School on June 18, 1970; that Judith R. Clarke was graduated from John Muir High School on June 18, 1970; and that Vivion Rostker was graduated from Pasadena High School on June 17, 1971.

3. Since their respective graduations none of the aforementioned individuals has been enrolled as a student at any school in the Pasadena Unified School District.

/s/ RAMON C. CORTINES
Ramon C. Cortines

Subscribed and sworn to before me this 11 day of September, 1975.

/s/ JEAN C. CARSON
Notary Public in and for said County and State

APPENDIX B.

(Original filed in the office of the Clerk)

AFFIDAVIT OF LEE G. PAUL

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } ss.

I, Lee G. Paul, being first duly sworn, say:

1. I am an attorney at law, licensed to practice before this Court and all courts in which the case of *Spangler* v. *Pasadena City Board of Education* has been heard. I am a member of the firm of Paul, Hastings & Janofsky (formerly Paul, Hastings, Janofsky & Walker), attorneys for Petitioners herein, and have been the attorney in said firm with primary responsibility for the representation of Petitioners in this action since November 1973.

2. In connection with said representation, I made all oral arguments on behalf of Petitioners and either conducted or supervised the examination or cross-examination of witnesses at the hearing before the United States District Court for the Central District of California on the motion of petitioners that is the subject of the petition for writ of certiorari herein.

3. In the complaint originally filed in this action Plaintiffs and Respondents Nancy Anne Spangler, Judith R. Clarke and Vivion Rostker allege that said action was brought on behalf of themselves and "all others similarly situated". Nevertheless, I am aware of no testimony, evidence or orders in said action relating to the identification of said plaintiffs as a class. I am further aware of no orders in the files of said action that purport to comply with the requirements of Rule 23 of the Federal Rules of Civil Procedure relating to the identification of a class of plaintiffs.

4. Notwithstanding the lack of such class action orders, the injunctions issued by said District Court against Petitioners in this action have at all times been based upon an apparent assumption that this action is and at all times was indeed a class action. For example, all District Court orders addressed to Petitioners have directed Petitioners to grant the relief specified in such orders to all students in the Pasadena Unified School District. Moreover, although said named Respondents have all long since graduated from the Pasadena Unified School District, said District Court continues to treat the instant case as a class action and continues to order Petitioners to grant relief to all students in said School District.

/s/ LEE G. PAUL
Lee G. Paul

Subscribed and sworn to before me this 11th day of September, 1975.

/s/ JEAN C. CARSON
Notary Public in and for said County and State

Supreme Court, U. S.
FILED
OCT 6 1975
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and

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Respondent.

RESPONSE OF RESPONDENTS SPANGLER, ET AL., TO PETITIONERS' MEMORANDUM SUGGESTING THAT THE CAUSE IS MOOT

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PEOPLE'S LOBBY PRESS LOS ANGELES

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Respondent.

RESPONSE OF RESPONDENTS SPANGLER, ET AL., TO PETITIONERS' MEMORANDUM SUGGESTING THAT THE CAUSE IS MOOT

Petitioners have filed a memorandum suggesting "this case may be moot." (P. 1.) For this proposition petitioners rely upon Board of School Commissioners of Indianapolis v. Jacobs (1975), 420 US 128. Aside the fact

that petitioners have overlooked the presence of the United States as a respondent here and a plaintiff (intervenor) in the trial court, a matter we will discuss more fully below, Jacobs is clearly distinguishable.

Jacobs was brought by students who had been involved in the publication and distribution of a student newspaper and they alleged that certain actions taken by the school board and its subordinates and certain of its rules and regulations interfered or threatened to interfere with the publication and distribution of the paper in violation of their First and Fourteenth Amendment rights. Presumably, violation by plaintiffs of the rules and regulations would subject *them* to discipline. The class on whose behalf plaintiffs sought to speak were "*all* high school students attending schools managed" by the school board. (Em-

phasis added.) This is quite a different situation from the case at bar where the action was brought to desegregate a public school system and where indeed all the students are affected and not just a few. For as this Court said in Brown I (Brown v. Board of Education [1954], 347 US 483, 495), "Separate educational facilities are inherently unequal."

To suggest that the case is moot because the named plaintiffs have graduated, and thus throw the rest of the students to the winds, is to disregard the teachings of twenty years of cases since Brown. Implicit and explicit in Brown II (Brown v. Board of Education [1955], 349 US 294) is that the lower courts will exercise continuing jurisdiction during the transition from segregation to desegregation, and during which time "they [the trial courts] will also consider the adequacy of any plans the defendants may

propose to meet these problems and to effectuate a transition to a racially nondiscriminatory system." 349 US at 301. This Court has consistently recognized that principle. "We agree," said this Court in Raney v. Board of Education (1968), 391 US 443, 449, "that the district courts 'should retain jurisdiction in school segregation cases to insure (1) that a constitutionally acceptable plan is adopted, and (2) that it is operated in a constitutionally permissible fashion so that the goal of a desegregated, non-racially operated school system is rapidly and finally achieved.'"[1] As in Gerstein v. Pugh (1975),

---

[1] The trial court is following that instruction. In its initial judgment in 1970 it said:

> "The Court retains jurisdiction of this cause in order to continue to observe and evaluate the plans and the execution of the plans of the Pasadena Unified School District in regard to the hiring, promotion, and assignment of teachers and professional staff members, the construction and location of facilities, and the assignment of students." 311 F.Supp. at 505.

420 US 103, 110, n. 11: "[I]n this case the constant existence of a class of persons suffering the deprivation is certain."[2]

Accordingly, Jacobs is inapplicable here.

Moreover, this case falls well within this Court's rule that it will not allow a case to fall on account of mootness when the problem is "capable of repetition yet evading review." Moore v. Ogilvie (1969), 394 US 814, 816. Surely if the situation in Moore is not such as to persuade the Court that the cause should founder on mootness, the instant case is not one either. In Moore, the plaintiffs sought to be candi-

---

[2] This is a truism applicable to the case at bar to this very moment. Even as this memorandum is being written, the trial court has been obliged to issue yet another order in response to a motion brought by the plaintiffs and present students attending Pasadena schools, and their parents, to prevent the school board from manipulating school assignments in such a way as to place greater burden on black students than on white. Opinion of District Court, dated September 30, 1975.

dates in a specific election. They complained as to the constitutionality of the signature-gathering requirements of Illinois. By the time the case arrived in this Court the election had been held, thus rendering it impossible for this Court to assist the plaintiffs as to the election. Nevertheless, this Court refused to allow mootness to stand in the way because the Illinois system "remains and controls future elections." 394 US at 816. (Note that there is nothing in the Court's statement as to the Moore plaintiffs being in or desiring to be in any future elections.) Therefore, said this Court, *ibid.*, "the need for its resolution thus reflects a continuing controversy," there, as to the "one man, one vote" problem. Similarly, the need for the effectuation of the Pasadena Plan reflects a continuing controversy, here, as to the segregated school system problem. (*See* fn. 2, *supra*.

Furthermore, even if somehow, erroneously as we say, the Jacobs rationale and not the Moore rationale is to be applied here, the defect, if it be that, is easily remedied, for new named parties seeking the same relief as the original named parties (*See* fn. 2, *supra*) can be added. Rogers v. Paul (1965), 382 U.S. 198, 199.

Finally, petitioners' suggestion that "this case may be moot" (p. 1) and that if so, "the judgments of the courts below should be vacated and the action should be dismissed" (p. 3), is for still another reason not well taken.[3] As we mentioned

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[3] Of course, if by "judgments" petitioners mean the judgments of the trial court and the court below in the instant proceeding which led to the presently pending petition for writ of certiorari, and if by "the action" petitioners mean the motion they brought on to reinstitute a free-choice plan in Pasadena and to be relieved of federal court jurisdiction, respondents do not object. We believe, however, that petitioners mean something quite different.

earlier, the United States is a party plaintiff-respondent. It was allowed to intervene under the 1964 Civil Rights Act, 42 USC 2000h-2. *See* Spangler v.[sic] United States v. Pasadena City Board of Education, 415 F.2d 1242 (CA 9 1969). It has participated, *as a party*, during the original trial, in earlier appeals (415 F.2d 1242; 427 F.2d 1352, *cert. den.*, 402 US 943), during the proceedings wherein petitioners sought to be relieved of the order to desegregate, during the appeal in the court below from the denial of that motion, in the contempt proceedings in both courts below, and, we understand, will shortly be filing its response to the petition for writ of certiorari. "In such action," under 42 USC 2000h-2, "the United States shall be entitled to the same relief as if it had instituted the action." The case, then, cannot be moot. The segregation problems

of the Pasadena school system which brought the United States into the case in the first place are very much alive.

We agree with petitioners that the petition for writ of certiorari should be denied. Their suggestion of mootness should likewise be rejected.

Respectfully submitted,

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JILL JAKES
DANIEL C. LAVERY
MARK D. ROSENBAUM
MARY ELLEN GALE

Attorneys for Respondents
Spangler, et al.

10/2/75

CERTIFICATE OF SERVICE

I, FRED OKRAND, certify as follows:

I am an attorney at law duly admitted to practice before the Supreme Court of the United States, and am one of the attorneys for respondents Spangler, et al., herein.

On October 2, 1975, I served the within RESPONSE OF RESPONDENTS SPANGLER, ET AL., TO PETITIONERS' MEMORANDUM SUGGESTING THAT THE CAUSE IS MOOT on petitioners herein by placing three copies thereof enclosed in a sealed envelope, with first class mail postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

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I further certify that all parties required to be served have been served.

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Supreme Court, U. S.
FILED
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No. 75-164

In the Supreme Court of the United States

OCTOBER TERM, 1975

PASADENA CITY BOARD OF EDUCATION, ET AL.,
PETITIONERS
v.
NANCY ANNE SPANGLER, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
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Assistant Attorney General,
BRIAN K. LANDSBERG,
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In the Supreme Court of the United States

OCTOBER TERM, 1975

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners—a California school board and certain of its members—administer a school district that has been operating under a court-ordered plan of desegregation since 1970. They seek review of a judgment of the court of appeals affirming the denial of their January 15, 1974, motion for (1) relief from the original desegregation order, (2) dissolution of the district court's injunction, (3) termination of the court's supervision, and (4) alternatively, leave to implement a freedom-of-choice plan of student assignments, at the elementary level, which the evidence showed would likely result in resegregation.

594-538—75——1

The court of appeals correctly concluded that, in the circumstances presented, the district court did not abuse its discretion in refusing the requested relief. Further review is not warranted.

1. On January 23, 1970, the United States District Court for the Central District of California entered an order enjoining racial discrimination in the operation of the Pasadena Unified School District and directing the development of a desegregation plan requiring that no school in the district enroll "a majority of any minority students." That order was based on a determination, supported by detailed findings of fact, that the school system had been *de jure* segregated for 16 years.[1] The board did not appeal the judgment of the district court, and the court-approved Pasadena Plan was implemented at the commencement of the 1970–1971 school year.

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[1] The judgment of January 22, 1970, together with the court's March 12, 1970, findings and conclusions, is reported at 311 F. Supp. 501. The court found that, between 1954 and 1970, discriminatory action and inaction by the school board had contributed to and promoted racial segregation (see 311 F. Supp. at 506–521).

Petitioners are incorrect in asserting (Pet. 3) that the discrimination found by the district court was, for the most part, passive. The court's findings reflect a series of affirmative, discriminatory actions by the board: (1) The board did not make a single attendance area change involving the assignment of students from a majority-white residential area to a majority-black school; instead, it transported white students past majority-black schools with excess capacity to majority-white schools (311 F. Supp. at 507–508) and effected other attendance changes the net effect of which was to make white schools "whiter" and black schools "blacker" (*id.* at 508–510). (2) It consistently rejected proposals by citizens' committees, the district's superintendent, and certain board members that would have significantly promoted integration (*id.* at 510–511). (3) It used transportaion to enable white students to avoid

At the February-March 1974 hearing on their motion for relief from the 1970 decree and termination of the court's continuing jurisdiction, petitioners presented evidence intended to show that the quality of education in Pasadena had deteriorated under the Pasadena Plan. The United States offered evidence showing that the plan had been successful, from an educational perspective, and the district court found

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attending largely black schools (*id.* at 512). (4) It hired few black teachers and assigned most of those whom it did hire to predominantly black schools (*id.* at 513–514); similarly, it assigned black substitute teachers to majority-black schools and allowed white substitutes to avoid teaching at black schools (*id.* at 514). (5) It assigned less experienced teachers with less education to majority-black schools more frequently than to majority-white schools (*id.* at 514). (6) It discriminated against blacks in the hiring and promotion of administrators (*id.* at 516). (1) It approved the construction of new facilities and additions to existing facilities which contributed to the racial identifiability of the district's schools (*id.* at 517–518). (8) It employed classroom "grouping" procedures that were based upon racially discriminatory tests and that resulted in classroom segregation by race (*id.* at 519). (9) It granted transfer requests, many of which it knew or should have known were groundless or racially motivated, which promoted racial segregation (*id.* at 520).

The district court found that the school district had experienced a high degree of racial separation, especially in its elementary schools, for 15 years. In each of those years 90 percent of the district's white elementary-age children had attended majority-white schools, while more than 50 percent of its black elementary-age children had attended majority-black schools (*id.* at 507). In the 1969–1970 school year, the court found, 85 percent of the district's black elementary-age children attended its eight majority-black elementary schools, and 93 percent of its white elementary-age children attended the remaining elementary schools (*id.* at 506–507); thirteen of its elementary schools were less than 5 percent black in enrollment, two were more than 90 percent black, three were more than 80 percent black, two were more than 60 percent black, and another was 59 percent black (*ibid.*).

itself unable to conclude otherwise (see 375 F. Supp. at 1308). Petitioners also attempted to show that the plan had caused "white flight" from the district's schools. The United States presented evidence showing that the trend of declining white enrollment in Pasadena had closely paralleled the California statewide trend since at least 1966 and that Pasadena's loss of white students could not be attributed to its desegregation efforts under the plan. The district court resolved the conflict in the evidence in favor of the respondents (*id.* at 1306).

2. In its present posture, this is a narrow case. Neither the correctness of the district court's 1970 conclusion that the Pasadena school system was *de jure* segregated, nor the validity of the court's directive that no school in the system enroll "a majority of any minority students," was before the court of appeals (see Pet. App. A3, A20). Yet petitioners seek to raise these issues here (see, *e.g.*, Pet. 2, 3, 10, 13), contending that the decision below has far-reaching implications inconsistent with this Court's decision in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, because of an alleged "commitment of the lower federal courts, like those below, to a rigid formula of specified racial balance to be accomplished by extensive busing" (Pet. 10). There is, however, no such commitment in the decision of the court of appeals; and any inconsistency that may have existed, prior to its decision, between the "no majority of any minority" requirement and this Court's rejection, in *Swann*, of an extended use of racial ratios to

overcome past discrimination, see 402 U.S. at 24–25, was, in any event, prospectively eliminated by the court of appeals, which "expressly disapprov[ed] such portions of the record as suggest that the district judge interprets his injunction to require continuous annual redistricting" (Pet. App. A11; see also Pet. App. A20).

Petitioners' concern about transporting school children to accomplish desegregation (Pet. 10) is a legitimate one that may call for the further attention of this Court in an appropriate case. But transportation is not an issue at the present stage of this case.[2] Similarly, questions of deteriorating educational quality and the so-called "white flight" phenomenon (see Pet. 4, 9–10) may be significant in other school districts and other cases if those phenomena could accurately be attributed to school desegregation measures; but, in view of the district court's findings (see 375 F. Supp. at 1306, 1308), this is not such a case. Because of the "narrow ambit of [its] review" resulting from the procedural posture of the case (Pet. App. A2), the court of appeals—correctly, in our view—did not directly address these issues; and this case in its present posture is not an appropriate one for this Court's resolution of them.

The principal question before the court of appeals was whether the district court had clearly erred in

[2] Indeed, as the district court found, "the evidence shows that as much or more busing would be necessary to accomplish the ends of an integrated school system under [petitioners'] Alternative Plan as is currently required to achieve the same ends under the Pasadena Plan" (375 F. Supp. at 1308).

determining that, between 1970 and 1974, conditions in Pasadena had not so changed as to justify dissolution of the court's unappealed injunction or termination of its continuing supervision over the actions of the school board (see Pet. App. A2). The court of appeals answered that question in light of the unique form in which this aspect of the case arose—a school board motion that expressed the board's intention to implement a predictably resegregative free-choice plan of student assignments (see Pet. App. A7–A8), either by securing judicial approval of that plan or by winning its freedom from judicial restraint.

The court of appeals applied well-settled legal principles. Judge Ely's opinion did not formulate a broad rule resolving the question (left open in *Swann*) of "how long a school system must remain under the control and direction of a federal district court" (Pet. 12). The opinion stated only that the district court "did not clearly err in concluding that it was not yet clear that the contemplated disestablishment of segregation had been achieved in the Pasadena Unified School District," and that "[o]n these facts the court did not abuse its broad equitable discretion in finding an urgent need to retain, for some time, its jurisdiction of the contro ersy" (Pet. App. A12).

3. Petitioners contend that the school system has become unitary despite deviations from the "no majority of any minority" requirement, and that the district court was therefore obliged to return it to the unsupervised control of the board (see Pet. 12–13). But injunctions in racial discrimination cases have a

threefold purpose: to stop official acts of discrimination, to correct the effects of past discrimination, and to protect against future discrimination. *Louisiana* v. *United States,* 380 U.S. 145, 154–156. A request for modification or dissolution of an injunction in a school desegregation case must be assessed in light of all these aims. The decisions below are correct, not only because of the school system's non-compliance with the specific injunctive provision of its unappealed court-ordered plan designed to eliminate all vestiges of racial discrimination and prevent resegregation in the future, but also, and more importantly, because of the board's announced intention to substitute a free-choice plan that the district court found would predictably lead to the resegregation of some schools.

There are circumstances in which a court of equity should modify or dissolve an injunction. *Swann* v. *Charlotte-Mecklenburg Board of Education, supra,* 402 U.S. at 31–32; *Dombrowski* v. *Pfister,* 380 U.S. 479, 492. As Judge Chambers' concurring opinion below noted (Pet. App. A20, A21), "a school district surely should not be kept under injunctions of a court forever," and in this case "a termination of the mandatory injunction within a very short time after the school [district] again gets in compliance" may well be appropriate. But, as Julge Ely's opinion stated (Pet. App. A10–A11), "[o]n the specific facts of this case * * *, it was reasonable for the District Court to conclude that full and effective elimination of racial discrimination had not been achieved during three school years following the initial year in which the

Pasadena Plan was in effect."[3] Since this school system has not yet arrived at the point, envisioned in *Swann,* when judicial supervision ceases to be necessary, the district court's denial of relief and retention of jurisdiction were proper. See *Raney* v. *Board of Education,* 391 U.S. 443, 449.

4. Petitioners point out that, in *Green* v. *County School Board,* 391 U.S. 430, this Court "did not invalidate 'freedom of choice' *per se*" (Pet. 15). But the district court disapproved the board's alternative plan, not simply because it was a free-choice plan, nor because it "did not include a continuing mandate for the 'no majority of any minority' rule" (Pet. 14), but because the court was not satisfied that, in Pasadena, such a plan would maintain desegregated schools (see 375 F. Supp. at 1307). There was, as Judge Ely stated (Pet. App. A14):

> ample evidence to support the District Court's conclusion that the proposed freedom of choice or "Alternative Plan" would not discharge the Board's duty to ". . . make every effort to achieve the greatest possible degree of actual desegregation. . . ." *Davis* v. *Board of School Commissioners,* 402 U.S. 33, at 37 (1971). Previous efforts by Pasadena to desegregate by

[3] Regardless of whether petitioners are correct in claiming that the board's failure to comply with the district court's outstanding injunction was solely "the result of demographic changes not attributable to the school board" (Pet. 13), the board's effort here to dissolve the injunction (and terminate judicial supervision) arose in the context of a board-proposed freedom-of-choice plan which would have resegregative effects beyond those allegedly attributable to demographic changes.

> "freedom of choice" plans had failed. * * * There was also evidence showing that freedom of choice plans in [other] California locations, the cities of Richmond and San Bernadino, had been wholly unsuccessful.

The district court's rejection o fthe board's alternative plan was entirely consistent with the decision in *Green.* See 391 U.S. at 440–441.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.[4]

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OCTOBER 1975.

[4] Petitioners have filed a memorandum suggesting that this case is moot because the original named plaintiffs have been graduated from high school and are no longer students in the Pasadena school system and because the district court has not certified a class action in accordance with Rule 23(c) of the Federal Rules of Civil Procedure. The United States, however, is a party plaintiff in this case, having intervened pursuant to Title IX of the Civil Rights Act of 1964, 42 U.S.C. 2000h–2. It is "entitled to the same relief as if it had instituted the action" (*ibid.*). Whatever may be the effect in cases such as these of the graduation of the named plaintiffs, the government's status as a party plaintiff in this case means that it is not moot.

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No. 75-164

PASADENA CITY BOARD OF EDUCATION, et al.,

Petitioners,

vs.

NANCY ANNE SPANGLER, et al.,

Respondents,

and

UNITED STATES OF AMERICA,

Respondent.

RESPONSE OF RESPONDENTS, SPANGLER, ET AL., TO PETITION FOR WRIT OF CERTIORARI

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RESPONSE OF RESPONDENTS, SPANGLER, ET AL., TO PETITION FOR WRIT OF CERTIORARI

Petitioners are members of a board of education which was found guilty of de jure segregation, ordered to desegregate pursuant to an approved plan, popularly known as the Pasadena Plan (311 F.Supp. 501 [1970]), and

who have done all in their power to discredit the plan and frustrate its chance of success. 375 F.Supp. at 1308.

Following the institution of the Court Order which the Board did not appeal, there followed a campaign by those dissatisfied with it, culminating in the present board membership, to resist the Pasadena Plan, although its thrust was simply to enjoin the Board members "from discriminating on the basis of race in the operation of the Pasadena Unified School District." 311 F. Supp. at 505. Rather than set about the business of encouraging the community to work for and support desegregation, the present Board membership campaigned for election upon such platforms as "Involuntary integration is self-defeating. It will not work!" (Exh. VI, p.2) or "minority children will be encouraged and assisted to attend schools outside their neighborhood

IF THEY VOLUNTARILY DECIDE TO DO SO" (IBID.),[1] and the slogan "STOP Forced Busing" was a hallmark of the campaign. (Exh. III, pp.1,2)[2]

Accordingly, petitioners are quite in error in contending that somehow the Pasadena District has become a unitary district.[3]

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1 Missing from such appeals to the votors was the suggestion that white students would be encouraged to attend schools outside <u>their</u> neighborhoods.

2 All against a background of the trial court's having found that segregated schools in Pasadena had come about largely as a result of the Board's rigid neighborhood school policy, its policy against forced busing plus an open enrollment or free choice plan which resulted in increasing segregation. <u>Cf Keyes v. School District No. 1</u> (1973), 413 US 189, 201-203.

3 It is significant that the petitioning school board members have been found in contempt of court for failing to carry out the provisions of the Pasadena Plan in the very important area of the selection of administrators. (<u>See United States v. Montgomery County Board of Education</u> (1969), 395 US 225, 231-2, recognizing that to achieve "a public school system wholly free from racial discrimination" desegregation of the staff is an important ingredient.)

(con'd next page)

Petitioners' failure or refusal to understand or acknowledge that this case deals with an intentionally segregated school district which has been ordered to desegregate and which has still not attained unitary status may account for their efforts to obtain review by this court, rather than setting themselves to the task of achieving unitariness. This is a case where the school board has resisted the desegregation order. There is no occasion for this Court at this point to interfere with the start that has been made toward desegregation.

Petitioners state with regard to the original order in this case, "The findings of violations were based not so much on affirmative acts of segregation by Petitioners, as on their failure to act to prevent 'racial imbalance.'" (Petition, p.3.) Not so. For

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That matter is presently on appeal before the court below. (No. 74-2530.)

example, when a "white" school was temporarily closed for repairs, the District transported that students three miles away to another "white" school, although five "black" schools, three of them with more unused capacity than the new school, were closer. 311 F.Supp. 501, 507. The examples are many. IBID. at 508.

In the same vein, petitioners state that since the institution of the Pasadena Plan it has been adhered to. (Petition, p.4.) Again, not so. In this delicate field where the success of desegregation depends so much upon the leadership given by those responsible for its effectuation, there is compliance and there is compliance. The trial court here found that "the Pasadena Plan has not had the cooperation from the Board." 375 F.Supp. at 1308. This is an understatement. It is amply supported by the record. Indeed, there was "vocal and active resistance." IBID., note 6. As the court said, "No one can now

estimate the possible results of the Pasadena Plan had it enjoyed the continued support of a Board who would act, as they profess, to 'do unto others as you would have done unto you.'" IBID.

Accordingly, petitioners' Question Number Three[4] assumes a non-existent premise, for there is no warrant for petitioners to claim that they have achieved a unitary system And until they do, and a court has so declared (this Court is not the forum for that determination), it would be improper to relieve the Board from the federal court's jurisdiction as it would be improper to have allowed petitioners' proposed alternative plan which predictably would lead the Pasadena system back to segregation, 375 F.Supp. at 1307, notes 9 and 12.

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[4] Inadvertently numbered 4. (Petition p.2.)

This is not the case to decide whether a freedom of choice plan is constitutionally acceptable. (Petitioners' Question Five.) As this Court said in Green v. County School Board of New Kent County (1968), 391 U.S. 430 440, if effective, it may well be acceptable. But Pasadena, this very school district, has had its experience with free choice and it did not work - - it was not effective. 311 F.Supp. at 510. The lower courts cannot be faulted for not allowing petitioners to reinstitute it.

Other questions presented by petitioners, e.g., one and two, are not properly before this Court. As Chief Judge Chambers, concurring in the court below, recognized, the posture of the case is not as though on appeal from the original decree. And surely the court below was correct in holding that it would be an abuse of appellate court power to upset the trial court in its determination

that there had not been a sufficient change in conditions to decree abandonment of the federal court's equitable powers. It will be time enough for that if and when such changes do occur. They have not yet. There is no occasion for this Court's intervention now.

Petitioners' question Four is similarly a non-existent issue. It is sophistic phraseology to the nth degree. Nothing in the trial court's order prevents petitioners from acting to prevent the school system from becoming all-minority. The difficulty with petitioners' attempting to frame a question which is not here is that they have not proved their point. As the Superintendent of Schools testified: the Pasadena Plan, though it may need some modifications, is preferable to the plan petitioners projected to the court in achieving an educationally sound plan for an integrated school system. 375 F.Supp. at 1308.

This in and of itself is sufficient support for the trial court's ruling, even had there been contrary evidence. And there was not. To paraphrase the Fifth Circuit in United States v. Hendry County School District, 504 F. 2d 550, 554 (1974): "We cannot tolerate resegregation of a former dual school system and the School Board of such a system must demonstrate that the new (plan) will not tend to promote that relapse." This, petitioners have not done. Indeed, the contrary has been shown.

CONCLUSION

The petition for writ of certiorari should be denied. Petitioners should be allowed (or required) to bend their efforts toward making the court decree work rather than to frustrate it.

Respectfully submitted,

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Attorneys for Respondents Spangler, et al.

CERTIFICATE OF SERVICE

I, Fred Okrand, certify as follows:

I am an attorney at law duly admitted to practice before the Supreme Court of the United States, and am one of the attorneys for Respondents Spangler, et al herein.

On September 30, 1975, I served the within RESPONSE OF RESPONDENTS, SPANGLER, ET AL., TO PETITION FOR WRIT OF CERTIORARI on petitioners and on respondent, United States of America herein by placing threecopies thereof enclosed in a sealed envelope, with first class postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

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and

UNITED STATES OF AMERICA,
Respondent.

MEMORANDUM OF PETITIONERS IN REPLY TO BRIEFS AND MEMORANDUM IN OPPOSITION TO PETITION FOR CERTIORARI AND TO SUGGESTION OF MOOTNESS.

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Respondent.

MEMORANDUM OF PETITIONERS IN REPLY TO BRIEFS AND MEMORANDUM IN OPPOSITION TO PETITION FOR CERTIORARI AND TO SUGGESTION OF MOOTNESS.

In response to the memorandum and briefs of the respondents, petitioners ask the Court to consider these few salient and dispositive propositions:

PETITION FOR CERTIORARI.

1. The sole reason for the trial court to find non-compliance in this case was the failure of petitioners to afford continuous annual redistricting to meet the ratios established by the original

decree. (Plaintiffs-respondents also suggest that the petitioners' pronouncements of their opposition to busing is also a violation. But it stretches the lower court's action too far to accept the proposition that the petitioners' exercise of their First Amendment rights is a valid basis for holding them in noncompliance with the desegregation decree.)

2. There was neither any way nor any reason for petitioners to have raised the issue of the requirement of a continuous annual redistricting on an appeal from the original judgment. Yet the argument is proferred by respondents that the failure to raise the question on appeal from the original judgment forecloses petitioners' rights on this appeal. The original judgment did not, by its terms, impose any requirement of continuous annual redistricting. That is why, in February, 1974, all parties hereto stipulated, though they all knew of the failure of annual redistricting to meet the quota, that petitioners had not committed any violations of the original decree.

3. This "Catch-22" formula is invoked by respondents in different terms at different parts of their briefs and memoranda.

The Government says that the rigid ratios, which the Court of Appeals below affirmed, were "prospectively eliminated by the court of appeals, which 'expressly disapprov[ed] such portions of the record as suggest that the district judge interprets his injunction to require continuous annual redistricting.' " The fact remains that the order of the trial court refusing to relieve petitioners of the obligation for annual redistricting was the order that was affirmed by the Court of Appeals, in spite of the language quoted by the Government, and the failure to maintain that "continuous annual redistricting" was the reason given by the Court of Appeals and the respondents for the failure of petitioners to have achieved desegregation. We respectfully submit that neither the respondents nor the lower court is entitled to have it both ways. Either there is a continuing annual redistricting requirement, which we contend and the Government all but concedes is invalid, in which case this Court should

review the judgment below, or there is no such requirement, in which case petitioners should be relieved of the judgment below.

4. Respondents, by the use of conclusory statements, attempt to evade the important issues that are raised here. They say that petitioners have not conformed with the requirements of desegregation. But there is no evidence to show the continuance of segregation, except the failure to maintain the "continuous annual redistricting," which they say in another paragraph, is not required.

5. So, too, they label the petitioner's Alternative Plan—which was nothing more than a proposed alternative plan on which they asked the right of a hearing that was denied them—as a "freedom of choice" plan, which they say is implicitly invalid. The facts that the plan is not a "freedom of choice" plan, as may be seen from a quick reading of the proposal, and that a "freedom of choice" plan is not inherently invalid, are not rebutted but ignored.

MOOTNESS.

1. It is clear from the record that, so far as the respondents-plaintiffs are concerned, the case is moot and the judgment should be vacated. Nothing is shown to establish, so far as they are concerned, any distinction from the decision of this Court in *Board of School Commissioners of Indianapolis* v. *Jacobs*, 420 U. S. 128 (1975).

2. Conceding the proposition that the Government as intervenor is "entitled to the same relief as if it had instituted the action" (Memorandum for the United States in Opposition, p. 9, n. 4), we still suggest the existence of mootness. The Government intervention at the trial court level was to effect relief for the plaintiffs and "those similarly situated." In sum, the ancillary intervention was in support of the claims of those whose interest in the outcome of the lawsuit has been dissipated by their gradua-

tion. The graduation of plaintiffs and those similarly situated—in the absence of a definition of a larger class—thus mooted not only plaintiff's claims but those of the intervenor as well.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-164

PASADENA CITY BOARD OF EDUCATION, ET AL.,
Petitioners,

vs.

NANCY ANNE SPANGLER, ET AL.,
Respondents,

and

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR PETITIONERS.

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BRIEF FOR PETITIONERS.

OPINIONS BELOW.

The opinions for the Court of Appeals for the Ninth Circuit are reported at 519 F. 2d 430. The opinion of the District Court for the Central District of California is reported at 375 F. Supp. 1304. An earlier opinion of the District Court is reported at 311 F. Supp. 501.

JURISDICTION.

The judgment of the Court of Appeals for the Ninth Circuit was entered on 5 May 1975. Certiorari was granted by this Court on 11 November 1975. The jurisdiction of this Court is invoked pursuant to 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED.

1. May a trial court validly impose an absolute requirement of racial balance for all schools within a school system as part of a desegregation decree?

2. May a trial court validly require a unitary school district continuously to maintain, within each school in its system, a specified and permanent racial balance, despite the occurrence over time of demographic changes beyond the board's control?

3. Must a unitary school system which has been in compliance with a desegregation decree for a period of four school years remain subject indefinitely to the control of the trial court which entered the decree?

4. Is a unitary school system precluded from adopting an educational program in the nature of an alternative plan because that plan would not maintain a prescribed racial balance in each school throughout the system, and would permit some freedom of choice in student matriculation?

CONSTITUTIONAL AND STATUTORY PROVISIONS.

The relevant constitutional and statutory provisions, the First and Fourteenth Amendments to the Constitution of the United States, Title 20 United States Code §§ 1701 *et seq.*, and Title 42 United States Code §§ 2000(c), 2000(c)(6), 2000(h)(2), and 2000(h)(3), are set out in the appendix to this brief.

STATEMENT.

On 23 January 1970, the United States District Court for the Central District of California entered a judgment in this case which enjoined the Pasadena City Board of Education "from discriminating on the basis of race in the operation of the Pasadena Unified School District." 311 F. Supp. at 505 [App. 3].* The defendants, petitioners here, were further "enjoined from failing to prepare and adopt a plan to correct racial imbalance at all levels in the Pasadena Unified School District." *Ibid.* The judgment continued: "The plan shall provide for student assignments in such a manner that, by or before the beginning of the school year that commences in September of 1970 there shall be no school in the District, elementary or junior high or senior high school, with a majority of any minority students." 311 F. Supp. at 505 [App. 3-4].

The trial court operated on the invalid assumption that racial imbalance and segregation were one and the same. "Racial segregation and racial imbalance are two names for the same phenomenon, racial separation. The terms are used interchangeably throughout these findings and conclusions." 311 F. Supp. at 506 n. 4 [App. 99].

The failure of the Pasadena School Board to correct this racial imbalance was the primary basis on which the system was found to be a dual system and, therefore, constitutionally defective. Thus, the trial court found:

> 1. The evidence in this case establishes that there is racial imbalance or segregation in the student bodies and faculties of the Pasadena Unified School District at all levels, elementary schools, junior high schools, and senior high schools.
>
> 2. That imbalance is a result of defendants failure to carry out their announced policies of integration, policies that relate both to faculty and student assignments.

* * * * *

* Citations to "App." are references to the Joint Appendix filed herewith.

> 5. Pasadena City Board of Education has used a neighborhood school policy and a policy against forced cross-town busing to explain its failure to carry out its policies of integrating students and teachers and staff members. The neighborhood school policy is an educational consideration, but it does not normally have constitutional proportions. Under facts of which the Pasadena City Board of Education has been aware since at least 1958 as they affect the District's elementary schools, it can be recognized that the use of neighborhood school policy results in racial imbalance and increasing racial imbalance. The same is true of the policy against cross-town busing.

311 F. Supp. 504 [App. 97-98].

In response to the trial court's judgment, the Pasadena School Board submitted a plan that accorded with the mandate of the trial court [App. 6-94]. And an order approving defendants' plan for integration was approved by the court on 10 March 1970 [App. 96].

Unlike most desegregation plans, the Pasadena Plan called for immediate and total desegregation. It was not a plan that used a step-by-step process. It extirpated all remnants of school segregation immediately. The plan was effectuated in September of 1970. At that point, Pasadena clearly was operated as a unitary school system. There was "no school in the District, elementary or junior high or senior high school, with a majority of any minority students."

The Pasadena Plan, enacted in March of 1970, was effectuated in September of 1970, and has remained in effect to this date. No exception was taken to the operation of the Plan by either the plaintiffs, the United States, or the trial court, until the petitioners filed their motions which are the subject of controversy on this appellate review. This is not to say that there was no community opposition to the rigid racial quotas and extensive cross-town busing that were required to effectuate them. The opposition was extensive and loud, and these issues were the primary subject of contention in the school board elec-

tions, at which the "anti-busing" candidates prevailed. It is to say, however, that the Pasadena Plan was fully effectuated by the school board, that it was fully supported with the increased financing that it made necessary, and that the record shows no actions by the school board in derogation of the Plan's effectiveness. Unlike other communities, such as Boston and Louisville, there has been no violence or threats of violence either by the pro- or antibusing forces in the community. However dedicated to a modification of the existent Plan the board representing the majority of the community might be, its dedication to change was a dedication to change through the machinery of law and not through the use of force. That is why the case is here.

The school board was concerned about the viability of the Pasadena school system under the existent plan because of two conditions. One was the diminishing proportion of the white student population [App. 298, 393]. The second was the diminishing quality of educational attainment, especially among minority students [App. 389, 522].

At the time of the framing of the Pasadena Plan, the school population of the district had 17,859 whites, 9,173 blacks, and 3,590 other minorities (primarily Hispanic-Americans). Thus, of the 30,622 students, 58.3% were white, 30% were black, and 11.7% were of other minorities. When the motions presented by the school board were filed in 1974, the Pasadena school population consisted of 11,188 whites, 10,155 blacks, and 4,071 other minorities, or 44% white, 40% black, and 16% other minorities [App. 415]. There was a 37.4% decrease in the white student population, a 10.7% increase in the black population, and a 31.2% increase in the population of other minorities. In the interim, a majority white student body had become a majority non-white student body. This is not, of course, a phenomenon unique to Pasadena, but its logical extension—*cf. Calhoun* v. *Cook*, 522 F. 2d 717, 718 (5th Cir. 1975)—was an understandable matter of concern to the school board.

So, too, there was ample evidence that under the Pasadena Plan as effected, there was a great disparity between the achievement scores of the whites and those of the minorities, although both were declining. See, *e.g.*, [App. 282].

On 15 January 1974 the petitioners filed a four part motion with the district court requesting: (1) to be relieved of the racial balance ruling; (2) for dissolution of the court's injunction; (3) for termination of the court's continued supervision over the board of education; and, in the alternative, (4) for modification of the existing plan by addition of the proposed Alternative Plan. That Alternative Plan is set out at 375 F. Supp. 1309-1312 [App. 460-465]. A hearing was held from 25 February to 1 March, 1974, and the trial court denied petitioners' motions in their entirety on 1 March. The court filed its opinion on 3 May 1974, and entered judgment as of the previous day. 375 F. Supp. 1304 [App. 452].

On the date that the 1974 trial began, all parties filed a stipulation which included two propositions relevant to this review. It was stipulated that:

> 2. The Pasadena Plan enacted pursuant to the Order of this Court date January 22, 1970 has been implemented;
>
> 3. Plaintiffs and Plaintiff-Intervenor are presently aware, on the basis of the discovery thus far concluded, of no violations of the Pasadena Plan up to and including the present, save that it is the contention of Plaintiffs that the appointment of the two Assistant Superintendents and the Director of Elementary Curriculum on July 10, 1973, the appointment of the Principals of the Wilson and Fundamental Schools on July 31, 1973, the failure of the Board to have the Black Task Force and the Mexican American Task Force for the school year 1973-74, the establishment of the Fundamental School, and the effect of the Fundamental School on the sending schools are each violations of said Plan.

[App. 268].

There is no question that all parties were aware of the fact that, at the time of the stipulation, demographic changes had

caused some schools to fall outside the restriction of "no majority of any minority" for any school in the district. The facts were, as Judge Wallace stated them in his dissenting opinion below:

> The injunction took effect in the fall of 1970. In October, 1970, no school had a majority Black enrollment. In October, 1971, one out of 35 regular schools in the district had a majority Black enrollment (51.95). In October, 1972, four schools were in violation with Black enrollments of 53.9%, 53.4%, 53.0% and 50.1%. Finally, in October, 1973, five schools failed to comply, with Black enrollments of 60.2%, 56.8%, 55.3%, 52.0%, and 51.3%. Thus, over the four-year period that the injunction has been in effect, only one school has had a Black enrollment in excess of 60% and only two have had an enrollment exceeding 55%, all in the most recent school year. During that time, the percentage Black enrollment in the district as a whole has increased from 32.8% (in October, 1970) to 40.0% (in October, 1973).

519 F. 2d at 443.

The obvious conclusion to be drawn from these facts in combination with the stipulation is that the parties did not understand the original judgment to have ordained continued reapportionment of the students each year in order to maintain within each school the racial balance of "no majority of any minority." (The fact is, of course, that white students are not any longer in a majority in the school system.) But that turned out not to be the trial judge's conception of his own order. For him, annual reassignment was a continuing requirement and would remain so. "Now, that meant to me that at least during my lifetime there would be no majority of any minority in any school in Pasadena." [App. 270.]

The trial judge's opinion read accordingly. He denied each of the petitioners' motions. He denied the first three elements because: (1) there had been deviation from the racial balance command, and (2) because the school board was elected on an antibusing platform and in opposition to the principles of the

Pasadena Plan, and had failed publicly to embrace the plan as the "given word." 375 F. Supp. at 1305-06. The court did not, and could not, point to any acts of the school board that were in violation of his decree or of the Pasadena Plan, except for not reassigning students each year to recreate the racial balance that he had decreed. So far as the decreased white student population, he found no significance in the facts: "for the trends evidenced in Pasadena closely approximate the state-wide trends in California schools, both segregated and desegregated, since 1966." *Id.* at 1306.

The trial judge rejected the alternative plan basically because it would not adhere to the racial balance formula that he had decreed. "Initially, at least eight schools . . . would have over 60% black enrollment." 375 F. Supp. at 1307 n. 9. (It must be remembered that this was a school district with 35 regular schools and a ~~black~~ student population that was 44% white and 40% black.) Moreover, the proposed plan had a "freedom-of-choice" element which could be a cause for some departure from the fixed racial balance that the court had decreed.

> The facts of *Green, supra,* may not exactly parallel what this Court found in Pasadena in 1970 or what evidently exists in Pasadena in 1974; but the message of *Green, supra,* is clear. Before any Court can stamp its imprimatur to a proposed "freedom of choice" plan of desegregation —or of continuing desegregation—it must be satisfied that freedom of choice is a viable alternative to a plan which can guarantee that no school in a once-segregated school district shall be permitted to have an enrollment with a majority of any minority.

375 F. Supp. at 1307 [App. 456].

Thus, the essential bases for rejecting all four parts of petitioners' motions was the court's insistence upon maintaining its decreed racial mix in every school in the system, and the court's distaste for a busing policy inconsistent with its own personal preferences.

The Court of Appeals for the Ninth Circuit affirmed the trial court's judgment, but without any agreement on the reasons why it should do so. 519 F. 2d 430. Judge Ely affirmed the judgment of the trial court because of the failure to adhere to the racial mix order. Judge Chambers would have found that order invalid if an appeal had been taken from the original judgment, but was prepared to tolerate the requirement of continued racial mix for one more round, but no longer. Judge Wallace would reverse because the trial court's judgment was inconsistent with the decisions of this Court. There was one difference between the Court of Appeals and the trial court that may be of some significance. The trial judge's personal distaste for the board's attitudes was not reflected in the appellate tribunal. As Judge Ely noted: "In upholding the District Court, we have assumed that the actions of the Board and its authorities were, from their viewpoint, taken in good faith." 519 F. 2d at 435 n. 5.

This Court granted a petition for a writ of certiorari to review the judgment below on 11 November 1975.

SUMMARY OF ARGUMENT.

I.

In 1970, the trial court imposed a desegregation plan on the Pasadena school district that compelled a rigid racial balance in every school in the district. That was an invalid plan. But the school district complied with the order and effectuated the plan.

In 1974, in the judgment subject to review here, the district court issued an order compelling the annual reassignment of students to maintain the racial balance it had originally ordained for every school in the district, "at least during my lifetime." That action is invalid under the opinions of this Court.

This Court has never condoned the desegregation of a school system by the imposition of fixed and permanent racial balance quotas. Such a plan and an order compelling the annual re-

assignment to maintain racial balance in each school are inconsistent with this Court's judgments.

II.

Because the Pasadena school district has been a unitary school system since the imposition of the 1970 plan, the time has come for it to be freed from the bondage imposed by the trial court. The arguments that the school district is not a unitary system are invalid and inconsistent with this Court's decisions. The demographic changes that have occurred without the board being responsible therefor, and the resulting failure of all schools to conform to the racial balance formula, do not show the absence of a unitary system. Nor do the school board's anti-busing platform and statements constitute segregatory acts.

III.

The demographic changes do suggest the need for a program better and different from one that simply requires reassignment of students to meet the racial balance standard. The program suggested by the school board, which calls for "magnet schools" with voluntary attendance, is designed to enhance the substantive educational program and decrease the chances of desegregation that might otherwise occur because of the constantly decreasing white population in the school system. Even if the trial court is allowed to retain continuing jurisdiction over the school board, it cannot preclude the institution of the Alternative Plan, which it has rejected because the Alternative Plan would not adhere to the racial mix formula and involves some elements of "freedom of choice."

IV.

This case is moot and the judgments below should be vacated and the case dismissed. All individual plaintiffs have been graduated and no class has been certified. The United States, as

intervenor-plaintiff under statutory authority, has achieved the full extent of relief available on behalf of the individual plaintiffs. It is legally precluded from seeking the relief sought here—a plan for permanent racial balance to be accomplished by forced busing.

ARGUMENT.

In *Keyes* v. *School District No. 1*, 413 U. S. 189, 253 (1973), Mr Justice Powell noted: "The single most disruptive element in education today is the widespread use of compulsory transportation, especially at elementary grade levels." It was not merely transportation to which he was pointing, but "compulsory transportation," or, in the vernacular, "forced busing." The truth of his proposition would be hard to gainsay. Nevertheless, it is appropriate to recognize that "compulsory transportation" or "forced busing" is only a means, albeit sometimes the only means utilized, for the effectuation of school desegregation plans that are framed, as is the one in this case, primarily in terms of "proper racial balance," otherwise described as "racial mix" or "racial quotas." The forced busing flows from the command for racial balance.

Once a court determines, as did the trial court here, that desegregation is to be defined in terms of racial balance, *i.e.*, that all schools in the district shall reflect in their student population, the same racial ratios that exist in the entire school population, then forced busing follows as a primary means for the effectuation of that goal. The more rigid the racial mix formula, the more extensive the compulsory transportation required to effect it.

This case presents a particularly rigid judicial order for racial balance, and, therefore, a particularly onerous busing obligation.

(1) The trial court, with the approval of the Court of Appeals for the Ninth Circuit, has insisted that every school in the district conform to the racial mix standard, "no majority of any minority," with no exceptions. In a school district that had, at

the time the plan was instituted, a student population of 58.3% white, 30% black, and 11.7% other minorities, and at the time of the action which is under review, a student population of 44% white, 40% black, and 16% other minorities, this is, indeed, a rigid, if not impossible, racial balance formula. The trial court, with the approval of the Court of Appeals for the Ninth Circuit, has insisted on the maintenance of this formula by annual reassignment of pupils, despite the demographic changes within the district which, in addition to movement within the district, has resulted in a 37.4% decrease in the white student population, a 10.7% increase in the black student population, and a 31.4% increase in the student population of other minorities [App. 415].

(2) When first instituted, the desegregation plan called for forced busing of 50% of its elementary school pupils, 52% of its junior high school pupils, and 27% of its high school pupils, [App. 46], thus putting the greatest burden where it was least able to be borne. The population shifts that have occurred since the initiation of the plan would necessarily require even a higher rate of forced busing.

I. The Judgment Below, Which Compels a Rigid Racial Balance in Every School in the Pasadena School District, Is Invalid.

A. The Original Judgment Below Compelling "Racial Balance" in Every School in the System Is Invalid.

The trial court in this case, when it first rendered its judgment in 1970, had the excuse that this Court had not yet rendered its opinions in *Swann* v. *Board of Education*, 402 U. S. 1 (1971), or *Milliken* v. *Bradley*, 418 U. S. 717 (1974). Its proposition that "racial balance" and "desegregation" were interchangeable terms, and its conclusion, that every school within the Pasadena system was required to meet its "racial balance" standard, were then not rendered in defiance of this Court's opinions,

but in ignorance of them. By the time of the 1974 judgment, which is the subject of review here, however, the trial court's judgment clearly required a rejection of this Court's positions and should, therefore, be reversed.

Since 1970, this Court has made it abundantly clear that racial balance is not a proper formula for a desegregation decree.

The invalidity of a decree compelling racial balance was made clear by a unanimous Court in *Swann* v. *Board of Education*, 402 U. S. at 24, in this language:

> If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse.

The Court's position in this regard was reaffirmed in *Milliken* v. *Bradley*, 418 U. S. at 740-41. And yet, the judgment below commands, exactly what this Court said that it could not command, a "particular degree of racial balancing or mixing" for every school in the district. This Court is "obliged to reverse."

B. The Judgment Below Compelling Annual Reassignment of Students In Order To Maintain "Racial Balance" in Every School in the System Is Invalid.

It is not possible, of course, to turn back the clock here any more than it was in *Brown* v. *Board of Education*, 347 U. S. 483 (1954). The Pasadena School District has been, since 1970, a totally "racially balanced" school district. Obviously, petitioners do not seek to overturn the original decree, however invalid it might be. But in the decision under review here, the lower courts have piled Pelion on Ossa. On top of the original racial balance program, the trial court now insists that the Pasadena School district has to be reassigned each year to maintain the existence of its racial balance formula in every school in the system. As the judge read his original decree, "that meant to me that at least during my lifetime there would be no majority of any minority in any school in Pasa-

dena," [App. 270]. The Court of Appeals for the Ninth Circuit did not read the command quite so expansively. The majority of that court were prepared to say that some time in the immediate future, the rigidity of the racial balance formula could be relaxed, but that time, according to them had not quite yet come.

Once again, in calling for annual reassignment, the courts below were acting inconsistently with this Court's determination in *Swann*, 402 U. S. at 31-32:

> Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary.

There is obviously no showing here that the petitioners have in any way contributed to, no less caused, the demographic changes that have resulted in some minor variations from the racial mix formula imposed on all schools in the district. And, as we assert in the following section of this brief, the Pasadena School district is and has been a unitary system since 1970 and entitled to be discharged from the judicial custody. Certainly the school district should not be compelled to suffer an extension of an erroneous racial balance order that was invalid *ab initio*.

II. The Pasadena School District Is and Has Been a Unitary System Since 1970 and Should Be Relieved of Judicial Control.

Unlike many, if not most, desegregation plans, the Pasadena plan, effected integration in one fell swoop. Since the institution of that plan, the Pasadena system is and has been one "within

which no person is . . . effectively excluded from any school because of race or color." *Alexander* v. *Holmes County Board of Education*, 396 U. S. 19, 20 (1969); *Northcross* v. *Board of Education of Memphis*, 397 U. S. 232, 237 (1970) (Burger, C. J.).

It is true, as the Court of Appeals below stated, 519 F. 2d at 431 n. 1:

> We note that one of the basic legal issues presented by this appeal, the question of when and under what circumstances a school district may compel a federal district court to relinquish jurisdiction and end its supervision, has not yet been addressed by any Court of Appeals or by the United States Supreme Court.

It is equally true, however, that this Court has set forth the conditions precedent to relieving a school of judicial supervision. This Court said, in *Raney* v. *Board of Education*, 391 U. S. 443, 449 (1968):

> In light of the complexities inhering in the disestablishment of state-established segregated school systems, *Brown II* contemplated that the better course would be to retain jurisdiction until it is clear that disestablishment has been achieved. We agree with the observation of another panel of judges of the Court of Appeals for the Eighth Circuit in another case that the district courts "should retain jurisdiction in school segregation cases to insure (1) that a constitutionally acceptable plan is adopted, and (2) that it is operated in a constitutionally permissible fashion so that the goal of a desegregated, non-racially operated school system is rapidly and finally achieved." *Kelley* v. *Altheimer*, 378 F. 2d 483, 489. See also *Kemp* v. *Beasley*, 389 F. 2d 178.

There can be no doubt, indeed there is no argument, that the Pasadena Plan is a constitutionally acceptable plan in the eyes of the District court and the Court of Appeals. (Its defect, the racial mix requirement, does not detract from the finding that the plan imposed a unitary system on the Pasadena school district.) There is no valid argument that the plan has not been

"operated in a constitutionally permissible fashion so that the goal of a desegregated, non-racially operated school system [has been] rapidly and finally achieved."

The argument of the courts below that the unitary system has not been achieved rests on one or two clearly invalid contentions: (1) that the demographic changes which caused some schools to fall outside the racial balance formula prevents the school system from being treated as unitary; (2) the expressions of the school board against forced busing and its proposals for modification of the Pasadena plan somehow deprive the school system of its unitary status.

A. The Demographic Changes That Caused Some Schools in the System To Fail To Maintain the Prescribed Racial Balance Do Not Adversely Affect the School System's Unitary Status.

This Court said in *Swann*, 402 U. S. at 31:

> At some point, these school authorities and others like them should have achieved full compliance with this Court's decisions in *Brown I*. The systems would then be "unitary" in the sense required by our decisions in *Green* and *Alexander*.
>
> It does not follow that the communities served by these systems will remain demographically stable, for in a growing mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action has been eliminated from the system. . . .

Nevertheless, the courts below have relied on the fact that demographic changes have resulted in the failure of some schools to meet the racial balance requirement as demonstration that the Pasadena system has not been fully desegregated. A comparison with two other recent cases, in conflict with the decision below, emphasizes the failure of the lower courts in this case to adhere to the Court's pronouncements. It is not inappropriate,

first, to point out that the disparities, in light of the school population, hardly even constitute violations of the racial balance standard imposed by the lower courts. After the demographic changes, not attributable to the school board—indeed, referred to by the lower courts as typical of the changes occurring in all school districts in California—there were five schools that did not maintain the required white majority: one of them had a 60.2% black majority, the other four had black majorities of 56.8%, 55.3%, 52.9%, and 51.3% respectively. This, in a school population that was 40% black and 44% white. 519 F. 2d at 443.

The two Court of Appeals decisions referred to above were *Mapp* v. *Board of Education*, ... F. 2d ..... (6th Cir., 20 October 1975), and *Calhoun* v. *Cook*, 522 F. 2d 717 (5th Cir. 1975). In the *Mapp* case, the desegregation plan called for the following high school student distribution:

	Black	White
Brainerd High School	32%	68%
Chattanooga High School	44%	56%
Howard High School	75%	25%
Riverside High School	75%	25%

As a result of demographic changes, the actual attendance figures were as follows:

	Black	White
Brainerd High School	39%	61%
Chattanooga High School	43%	57%
Howard High School	99%	1%
Riverside High School	99%	1%

The Sixth Circuit held that there was no violation of its desegregation decree because of the disparities caused by population movement after the formulation of the plan.

In the Atlanta case, *Calhoun* v. *Cook*, the Court of Appeals for the Fifth Circuit, unanimously held that a school system was unitary despite demographic changes of far wider scope than those involved in this case. As the Fifth Circuit there pointed

out, a segregated school system—segregated by law—which in 1958 contained 115,000 pupils was changed into a substantially segregated school system of 80,000 pupils. A system with a 70% white majority turned into a system with an 85% black majority. 522 F. 2d at 718.

"Out of 148 schools in the city system Atlanta still operates 92 schools with student bodies which are over 90% black." 522 F. 2d at 719. The Fifth Circuit sustained a ruling that the system "was unitary and had purged itself of all vestiges of the formerly state imposed dual system," although this "unitary . . . school district . . . has never utilized noncontiguous pairing, has never bussed white children into predominant black schools and in which over 60% of its schools are all—or substantially all —black." *Ibid.*

Yet, the courts below hold that Pasadena has not achieved unitary status, despite extensive busing, despite the fact that there are no all black or substantially all black schools, because five schools have black majorities ranging from 50% to 60% as a result of demographic changes for which petitioners have had no responsibility. Certainly, the population shifts that have caused the minor variants in attendance ratios in Pasadena cannot be considered either to have been violations of the original decree or as destroying the unitary nature of the system created in 1970.

B. The Petitioners' Outspoken Opposition to Forced Busing Cannot Be Considered a Violation of the Unitary System.

Mr. Justice Holmes once wrote: "It is not enough for the knight of romance that you agree that his lady is a very nice girl—if you do not admit that she is the best that God ever made or will make you must fight." Holmes, *Collected Legal Papers* 310 (1920). That, too, is the attitude of the district court judge below. It is not enough that the school board has carried out the Pasadena Plan in its every detail, and there is no evidence of any failure to comply. Judge Real wants the board

also to abstain from speaking out against forced busing and holds that its failure to do so amounts to continuing segregation.

We do not press here the question whether such speech as the members of the school board have indulged can, within the confines of the First Amendment, be made into a violation of the school desegregation decree. We think it suffices that nothing that the members of the School Board have said is different in substance from the announced policy of the enacted laws of the United States or from the views of Mr. Justice Powell, expressed in his concurring opinion in *Keyes* v. *School District No. 1*, 413 U. S. 189, 244 *et seq.*

For example, the provisions of 20 U. S. C. §§ 1701 *et seq.*, include the following:

> **§ 1701. Congressional Declaration of Policy.**
>
> (a) The Congress declares it to be the policy of the United States that—
>
> . . .
>
> (2) the neighborhood is the appropriate basis for determining public school assignments.
>
> **§ 1704. Balance Not Required.**
>
> The failure of an educational agency to attain a balance, on the basis of race, color, sex, or national origin, of students among its schools shall not constitute a denial of equal educational opportunity, or equal protection of the laws.
>
> **§ 1707. Population Changes Without Effect, Per Se, on School Population Changes.**
>
> When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in the population occur which result in school population changes in any school within such a desegregated school system, such population changes so occurring shall

> not, per se, constitute a cause for civil action for a new plan of desegregation or for modification of the court approved plan.

See also §§ 1705, 1714, 1717, and 1718. The entire statute is set out in the appendix to this brief.

It hardly seems possible that the voicing by the members of the Pasadena School board of the very policies declared to be law by the Congress of the United States can be taken to be a violation of the unitary system that has been in effect in Pasadena since 1970.

It would seem clear that the unitary system secured by the institution of the original Pasadena Plan under the orders of the court below has remained inviolate during the period since that time. Neither the changed racial balance in a few of the schools nor the expressed views of the school board, to which the trial judge took such exception, can be treated as an infringement of the unitary nature of the system. The judicial control of the Pasadena educational system should, therefore, be ended, as was contemplated by this Court in the *Swann* and *Alexander* cases cited above.

III. If the Trial Court Is Allowed To Retain Jurisdiction, It Should Be Compelled To Allow the Amendment to the Plan Proposed by the School Board.

The school board proposed, in the event that the motions to be relieved of the trial court's yoke were denied, that its amendments to the Pasadena Plan be allowed to be put in effect. The plan essentially consisted of creating specialized schools with differing programs which, it was hoped, would be found attractive enough to both black and white parents to entice attendance by a racially mixed group of students. The concept was that a good educational program would bring out voluntary attendance, even if voluntary—as distinguished from forced—busing were required to accomplish the feat. The proposed amended

plan is set out in the district court's opinion. 375 F. Supp. 1309-12. [App. 460-465]. The petitioners asked for its utilization for a three-year period to test its effectiveness, both in reducing white flight and improving the quality of education in the school district. See *id.* at 1308 n. 17. The trial court denied this opportunity, for two reasons, neither of which is adequate to support its conclusion.

The first reason was the familiar one, that the proposed amended plan would not maintain the racial balance quotas that the trial court had established through the original plan. Once again, it should be pointed out that this is not a defect that warrants rejection of the proposed plan. In addition to the authorities already cited, reference may be made to both the majority and minority opinions in *Wright* v. *Council of City of Emporia,* 407 U. S. 451 (1972), where the entire Court was in agreement that the absence of racial balance was not a bar to the validity of an amended desegregation plan. Mr. Justice Stewart, speaking for the majority, said:

> We need not and do not hold that this disparity in the racial composition of the two systems would be sufficient reason, standing alone, to enjoin the creation of the separate school district. The fact that a school board's desegregation plan leaves some disparity in racial balance among various schools in the system does not alone make the plan unacceptable. We observed in *Swann, supra,* that "[t]he constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole." 402 U. S., at 24.

407 U. S. at 464.

The four-man minority, speaking through the Chief Justice, put the same proposition in this language:

> Obsession with such minor statistical differences reflects the gravely mistaken view that a plan providing more consistent racial ratios is somehow more unitary than one which tolerates a lack of racial balance. Since the goal

> is to dismantle dual school systems rather than to reproduce in each classroom a microcosmic reflection of the racial proportions of a given geographical area, there is no basis for saying that a plan providing for a uniform racial balance is more effective or constitutionally preferred.

407 U. S. at 474.

The second reason offered by the trial court is no better than the first. The trial court ruled that the proposed plan involved freedom of choice and was, therefore, not to be tolerated. Reliance was placed, mistakenly, on *Green* v. *County School Board of Kent County*, 391 U. S. 430 (1968). First, it should be recalled that *Green* was concerned with a "freedom-of-choice" plan that was contemplated as the exclusive means for transmuting a dual system into a unitary school system. Here, the unitary school system already exists, the problem is to inhibit resegregation. Moreover, the plan is not merely a "freedom-of-choice" plan. First, it is not an open choice for all schools, but only for a specified group of schools within the system. Second, it is not merely "freedom of choice" among existing schools but freedom of choice among a variety of different kinds of school programs.

Green did not outlaw such "freedom-of-choice" elements. That case clearly announced:

> We do not hold that "freedom of choice" can have no place in such a plan. We do not hold that a "freedom-of-choice" plan might of itself be unconstitutional, although that argument has been urged upon us. Rather, all we decide today is that in desegregating a dual system a plan utilizing "freedom of choice" is not an end in itself.

391 U. S. at 439-40. Nor is the "freedom-of-choice" element in the alternative plan offered here "an end in itself."

Other circuits have properly held that plans including specialized schools, as this one does, with an opportunity for parental choice among them, are appropriate even where the plan is directed to the translation of a dual system into a unitary one.

See, *e.g.*, *Hart* v. *Community School Board of Education, New York School District No. 21*, 542 F. 2d 37, 54-55 (2d Cir. 1975), citing *Stout* v. *Jefferson County Board of Education*, 483 F. 2d 84, 85 (5th Cir. 1973), and Educational Amendments of 1974, Pub. L. 93-380, Title II, § 214(f) (August 21, 1974). (The statute, 20 U. S. C. § 1713(f), is set out in the appendix to this brief, at A7.)

Since neither of the reasons tendered by the trial court were valid bases for rejecting an educational decision by the Pasadena School Board, the Board should be permitted to make its effort towards its mutual goals of preventing resegregation in Pasadena and improving the quality of the education afforded to all of its students.

IV. If This Case Is Moot, as Petitioners Suggest, the Judgments Below Should Be Vacated and the Case Dismissed.

Mootness is a jurisdictional issue. *Steffel* v. *Thompson*, 415 U. S. 452, 458 (1973); *S. E. C.* v. *Medical Committee for Human Rights*, 404 U. S. 403, 407 (1972); *Golden* v. *Zwickler*, 394 U. S. 103, 110 (1969).

> The rule in federal cases is that an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed. See, *e.g.*, *Roe* v. *Wade*, 410 U. S. at 125; *SEC* v. *Medical Committee for Human Rights*, 404 U. S. 403 (1972); *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950).

Steffel v. *Thompson*, 415 U. S. at 459 n. 10. The proper judgment for this Court, if the case is moot, is to vacate the judgments below and order the dismissal of the case. *S. E. C.* v. *Medical Committee on Human Rights*, 404 U. S. at 407; *Indianapolis School Comm'rs* v. *Jacobs*, 420 U. S. 128, 130 (1975); *Weinstein* v. *Bradford*, No. 74-1287, 44 U. S. L. W. 3372 (10 December 1975).

A. The Cause Is Moot as to the Individual Plaintiffs.

There can be no doubt, under this Court's decisions, that the case is moot insofar as the individual plaintiffs-respondents are concerned. All of the original plaintiffs have been graduated. See Petitioner's Memorandum Suggesting Mootness, Appendix. The case has not been qualified as a class action. *Ibid.* This Court's rulings in *De Funis* v. *Odegaard*, 416 U. S. 312 (1974), and *Indianapolis School Commissioners* v. *Jacobs, supra.* make it clear that this calls for dismissal for mootness.

Indianapolis School Commissioners v. *Jacobs*, 420 U. S. at 129-30, is particularly instructive:

> At oral argument, we were informed by counsel for petitioners that all of the named plaintiffs in the action had graduated from the Indianapolis school system; in these circumstances, it seems clear that a case or controversy no longer exists between the named plaintiffs and the petitioners with respect to the validity of the rules at issue. The case is therefore moot unless it was duly certified as a class action pursuant to Fed. Rule Civ. Proc. 23, a controversy still exists between petitioners and the present members of the class, and the issue in controversy is such that it is capable of repetition yet evading review. *Sosna* v. *Iowa*, 419 U.S. 393 (1975). Because in our view there was inadequate compliance with the requirements of Rule 23(c), we have concluded that the case has become moot.

The only formal entry made by the District Court below purporting to certify this case as a class action is contained in that court's "Entry on Motion for Permanent Injunction," wherein the court "conclude[d] and ordered" that "the remaining named plaintiffs are qualified as proper representatives of the class whose interest they seek to protect." 349 F. Supp., at 611. No other effort was made to identify the class or to certify the class action as contemplated by Rule 23(c)(1); nor does the quoted language comply with the requirement of Rule 23(c)(3) that "[t]he judgment in an action maintained as a class action under subdivision . . . (b)(2) . . . shall include and describe those whom the court finds to be members of the class." The need

> for definition of the class purported to be represented by the named plaintiffs is especially important in cases like this one where the litigation is likely to become moot as to the initially named plaintiffs prior to the exhaustion of appellate review. Because the class was never properly certified nor the class properly identified by the District Court, the judgment of the Court of Appeals is vacated and the case is remanded to that court with instructions to order the District Court to vacate its judgment and to dismiss the complaint.

Indeed, this case is *a fortiori*. For the original plaintiffs received all the relief, and perhaps more, than they were entitled to receive. In so doing they eliminated the grievance by which their class might be described. The Pasadena School District has become a unitary school system. And there is no possibility that the original deficiencies of which plaintiffs complained could again be imposed on them. See *Weinstein* v. *Bradford, supra.*

B. The Cause Is Moot as to the United States.

The United States does not contest the fact that the case is moot as to the plaintiffs. See Memorandum for the United States in Opposition, p. 9, n. 4. It asserts, instead, that because it is a party to the action under Title IX of the Civil Rights Act of 1964, 42 U. S. C. § 2000h-2, it is "entitled to the same relief as if it had instituted the action," and the case is not moot. Even by this standard, however, the presence of the United States is insufficient to preclude the dismissal of the action as moot.

First, if one looks to the role actually played by the United States in this case, it becomes quite clear that its function was purely ancillary to that of the plaintiffs and that it asserted no right to relief except in terms of the plaintiffs' demands. It follows that when the plaintiffs' rights have been secured and are no longer in issue, the United States has no interest to protect. The United States is not an adequate substitute for a real class whose interests are directly affected.

The same result follows if, as the United States suggests, it is entitled to relief as "if it had instituted the action." For, if we look to the governing law on which the Government would rely, we see two things. First, that there is no authorization in Title IX for the United States to file such a suit except on behalf of wronged individuals who could not secure adequate counsel in some other fashion. That is, its warrant would be to secure the interests of the plaintiffs, and those interests are no longer in issue here. Second, had it filed such a suit under the statute on which it relies, the Government would be precluded from seeking the kind of relief invoked here, *i.e.*, a plan for racial balance to be accomplished by forced busing.

Not only does 42 U. S. C. § 2000c-6 specifically preclude seeking an order "to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve racial balance," but the statute, 42 U. S. C. § 2000c(b), sets forth a definition of desegregation "that is controlling for purposes of this statute." The statute, on which the Government would predicate its authority to proceed here, states:

> (b) "Desegregation" means the assignment of students of public schools without regard to their race, color, religion, sex, or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance."

Congress may not have the power to restrict the remedies of a court of equity in constitutional cases. In any event, 42 U. S. C. § 2000c-6, has been read not to impose such restraints. *Swann* v. *Board of Education*, 402 U. S. 1, 16-17 (1971). But surely it is within the power of the Congress to enact laws which prescribe the role that the Attorney General is authorized to play in suits which it authorizes the Attorney General to bring. And here Congress has spoken against the Attorney General securing relief in a school segregation case which would provide forced busing to effect racial balance.

It is, perhaps, appropriate to point out that this was not an action by the plaintiffs under 20 U. S. C. § 1706, so that the intervention by the United States could not be justified under 20 U. S. C. § 1709.

The cause, therefore, is moot as to the United States as well.

CONCLUSION.

The judgment of the lower courts should be reversed. This Court should, at least, order that the Pasadena School District cannot be placed under a continuing mandate to maintain racial balance in the schools of the district where such racial imbalance as may have occurred is not caused by petitioners. More appropriately it should order the trial court to relinquish control over the Pasadena School Board now that a unitary system has long since been achieved. If this Court does neither of these things, it certainly should compel the trial court to allow the modification of the Pasadena Plan, so that the schools in that district may be relieved of the threat of white flight and be given the opportunity to turn their attention to securing quality education as well as desegregation.

Should the Court determine that the cause is moot, however, it should simply order the vacation of the judgments below and the dismissal of the action.

Respectfully submitted,

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APPENDIX OF RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS.

THE CONSTITUTION OF THE UNITED STATES:

AMENDMENT I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV.

SECTION I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

20 U. S. C.

SUBCHAPTER I—EQUAL EDUCATIONAL OPPORTUNITIES.

§ 1701. Congressional Declaration of Policy.

(a) The Congress declares it to be the policy of the United States that—

(1) all children enrolled in public schools are entitled equal educational opportunity without regard to race, color, sex, or national origin; and

(2) the neighborhood is the appropriate basis for determining public school assignments.

(b) In order to carry out this policy, it is the purpose of this subchapter to specify appropriate remedies for the orderly removal of the vestiges of the dual school system.

§ 1702. Congressional Findings; Necessity for Congress to Specify Appropriate Remedies for Elimination of Dual School Systems Without Affecting Judicial Enforcement of Fifth and Fourteenth Amendments.

(a) The Congress finds that—

(1) the maintenance of dual school systems in which students are assigned to schools solely on the basis of race, color, sex, or national origin denies to those students the equal protection of the laws guaranteed by the fourteenth amendment;

(2) for the purpose of abolishing dual school systems and eliminating the vestiges thereof, many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in the extensive transportation of students;

(3) the implementation of desegregation plans that require extensive student transportation has, in many cases, required local educational agencies to expend large amount of funds, thereby depleting their financial resources available for the maintenance or improvement of the quality of educational facilities and instruction provided;

(4) transportation of students which creates serious risks to their health and safety, disrupts the educational process carried out with respect to such students, and impinges significantly on their educational opportunity, is excessive;

(5) the risks and harms created by excessive transportation are particularly great for children enrolled in the first six grades; and

(6) the guidelines provided by the courts for fashioning remedies to dismantle dual school systems have been, as the Supreme Court of the United States has said, "incomplete and imperfect," and have not established, a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in order to eliminate the vestiges of a dual school system.

(b) For the foregoing reasons, it is necessary and proper that the Congress, pursuant to the powers granted to it by the Constitution of the United States, specify appropriate remedies for the elimination of the vestiges of dual school systems, except that the provisions of this chapter are not intended to modify or diminish the authority of the courts of the United States to enforce fully the fifth and fourteenth amendments to the Constitution of the United States.

§ 1703. Denial of Equal Educational Opportunity Prohibited.

No State shall deny equal education opportunity to an individual on account of his or her race, color, sex, or national origin, by—

(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools;

(b) the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with part 4 of this chapter, to remove the vestiges of a dual school system;

(c) the assignment by an educational agency of a student to a school, other than the one closest to his or her

place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his or her place of residence within the school district of such agency providing the appropriate grade level and type of education for such student;

(d) discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff, except to fulfill the purposes of subsection (f) below;

(e) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency; or

(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

§ 1704. Balance Not Required.

The failure of an educational agency to attain a balance, on the basis of race, color, sex, or national origin, of students among its schools shall not constitute a denial of equal opportunity, or equal protection of the laws.

§ 1705. Assignment on Neighborhood Basis Not a Denial of Equal Educational Opportunity.

Subject to the other provisions of this subchapter, the assignment by an educational agency of a student to the school nearest his place of residence which provides the appropriate grade level

and type of education for such student is not a denial of equal educational opportunity or of equal protection of the laws unless such assignment is for the purpose of segregating students on the basis of race, color, sex, or national origin, or the school to which such student is assigned was located on its site for the purpose of segregating students on such basis.

§ 1706. Civil Actions by Individuals Denied Equal Educational Opportunities or by Attorney General.

An individual denied an equal educational opportunity, as defined by this subchapter may institute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate. The Attorney General of the United States (hereinafter in this chapter referred to as the "Attorney General"), for or in the name of the United States, may also institute such a civil action on behalf of such an individual.

§ 1707. Population Changes Without Effect, Per Se, on School Population Changes.

When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within a desegregated school system, such school population changes so occurring shall not, per se, constitute a cause for civil action for a new plan of desegregation or for modification of the court approved plan.

§ 1708. Jurisdiction of District Courts.

The appropriate district court of the United States shall have and exercise jurisdiction of proceedings instituted under section 1706 of this title.

§ 1709. Intervention by Attorney General.

Whenever a civil action is instituted under section 1706 of this title by an individual, the Attorney General may intervene in such action upon timely application.

§ 1710. Civil Actions by Attorney General; Notice of Violations; Certification Respecting Undertaking Appropriate Remedial Action.

The Attorney General shall not institute a civil action under section 1706 of this title before he—

(a) gives to the appropriate educational agency notice of the condition or conditions which, in his judgment, constitute a violation of part 2 of this subchapter; and

(b) certifies to the appropriate district court of the United States that he is satisfied that such educational agency has not, within a reasonable time after such notice, undertaken appropriate remedial action.

§ 1712. Formulating Remedies; Applicability.

In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, a court, department, or agency of the United States shall seek or impose only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of the laws.

§ 1713. Priority of Remedies.

In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, which may involve directly or indirectly the transportation of students, a court, department, or agency of the United States shall consider and make specific findings on the efficacy in correcting such denial of the following remedies and shall require implementation of the first of the remedies set out below, or of the first combination thereof which would remedy such denial:

(a) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account school capacities and natural physical barriers;

(b) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account only school capacities;

(c) permitting students to transfer from a school in which a majority of the students are of their race, color, or national origin to a school in which a minority of the students are of their race, color, or national origin;

(d) the creation or revision of attendance zones or grade structures without requiring transportation beyond that described in section 1714 of this title;

(e) the construction of new schools or the closing of inferior schools;

(f) the construction or establishment of magnet schools; or

(g) the development and implementation of any other plan which is educationally sound and administratively feasible, subject to the provisions of sections 1714 and 1715 of this title.

§ 1714. Transportation of Students—Limitation to School Closest or Next Closest to Place of Students' Residence.

(a) No court, department, or agency of the United States shall, pursuant to section 1713 of this title, order the implementation of a plan that would require the transportation of any student to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student.

Health Risks; Impingement on Educational Process.

(b) No court, department, or agency of the United States shall require directly or indirectly the transportation of any student if such transportation poses a risk to the health of such student or constitutes a significant impingement on the educational process with respect to such student.

School Population Changes Resulting from Population Changes.

(c) When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated school system, no educational agency because of such shifts shall be required by any court, department, or agency of the United States to formulate, or implement any new desegregation plan, or modify or implement any modification of the court approved desegregation plan. which would require transportation of students to compensate wholly or in part for such shifts in school population so occurring.

§ 1715. District Lines.

In the formulation of remedies under section 1712 or 1713 of this title the lines drawn by a State, subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn for the purpose, and had the effect, of segregating children among public schools on the basis of race, color, sex, or national origin.

§ 1716. Voluntary Adoption of Remedies.

Nothing in this subchapter prohibits an educational agency from proposing, adopting, requiring, or implementing any plan of desegregation, otherwise lawful, that is at variance with the standards set out in this subchapter nor shall any court, department, or agency of the United States be prohibited from approving implementation of a plan which goes beyond what can be required under this subchapter, if such plan is voluntarily proposed by the appropriate educational agency.

§ 1717. Reopening Proceedings.

A parent or guardian of a child, or parents or guardians of children similarly situated, transported to a public school in accordance with a court order, or an educational agency subject to a court order or a desegregation plan under title VI of the Civil Rights Act of 1964 in effect on August 21, 1974, and intended to end segregation of students on the basis of race, color, or national origin, may seek to reopen or intervene in the further implementation of such court order, currently in effect, if the time or distance of travel is so great as to risk the health of the student or significantly impinge on his or her educational process.

§ 1718. Limitation on Court Orders; Termination of Orders Conditioned Upon Compliance with Fifth and Fourteenth Amendments; Statement of Basis for Termination Orders; Stay of Termination Orders.

Any court order requiring, directly or indirectly, the transportation of students for the purpose of remedying a denial of the equal protection of the laws may, to the extent of such transportation, be terminated if the court finds the defendant educational agency has satisfied the requirements of the fifth or fourteenth amendments to the Constitution, whichever is appli-

cable, and will continue to be in compliance with the requirements thereof. The court of initial jurisdiction shall state in its order the basis for any decision to terminate an order pursuant to this section, and the termination of any order pursuant to this section shall be stayed pending a final appeal or, in the event no appeal is taken, until the time for any such appeal has expired. No additional order requiring such educational agency to transport students for such purpose shall be entered unless such agency is found not to have satisfied the requirements of the fifth or fourteenth amendments to the Constitution, whichever is applicable.

§ 1720. Definitions.

For the purposes of this subchapter—

(a) The term "educational agency" means a local educational agency or a "State educational agency" as defined by section 881(k) of this title.

(b) The term "local educational agency" means a local educational agency as defined by section 881(f) of this title.

(c) The term "segregation" means the operation of a school system in which students are wholly or substantially separated among the schools of an educational agency on the basis of race, color, sex, or national origin or within a school on the basis of race, color, or national origin.

(d) The term "desegregation" means desegregation as defined by section 2000c(b) of Title 42.

(e) An educational agency shall be deemed to transport a student if any part of the cost of such student's transportation is paid by such agency.

§ 1721. Separability of Provisions.

If any provision of this subchapter or of any amendment made by this subchapter, or the application of any such provision to any person or circumstance, is held invalid, the remainder of the

provisions of this subchapter and of the amendments made by this subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

SUBCHAPTER II—ASSIGNMENT AND TRANSPORTATION OF STUDENTS.

§ 1751. Prohibition Against Assignment or Transportation of Students to Overcome Racial Imbalance.

No provision of this Act shall be construed to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

§ 1752. Appeals from Federal District Court Transfer or Transportation Orders Affecting School Attendance Areas and Achieving Balancing of Students; Postponement of Federal Court Orders Pending Exercise of Appellate Remedy; Expiration of Section.

Notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court which requires the transfer or transportation of any student or students from any school attendance area prescribed by competent State or local authority for the purposes of achieving a balance among students with respect to race, sex, religion, or socioeconomic status, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired. This section shall expire at midnight on June 30, 1978.

§ 1753. Uniform Rules of Evidence Requirement.

The rules of evidence required to prove that State or local authorities are practicing racial discrimination in assigning stu-

dents to public schools shall be uniform throughout the United States.

§ 1754. Provisions Respecting Transportation of Pupils to Achieve Racial Balance and Judicial Power to Insure Compliance with Constitutional Standards Applicable to the Entire United States.

The proviso of section 2000c-6(a) of Title 42 providing in substance that no court or official of the United States shall be empowered to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another by one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards shall apply to all public school pupils and to every public school system, public school and public school board, as defined by title IV, under all circumstances and conditions and at all times in every State, district, territory, Commonwealth, or possession of the United States, regardless of whether the residence of such public school pupils or the principal offices of such public school system, public school or public school board is situated in the northern, eastern, western, or southern part of the United States.

§ 1755. Additional Priority of Remedies After Finding of De Jure Segregation.

Notwithstanding any other provision of law, after June 30, 1974 no court of the United States shall order the implementation of any plan to remedy a finding of de jure segregation which involves the transportation of students, unless the court first finds that all alternative remedies are inadequate.

§ 1756. Remedies with Respect to School District Lines.

In the formulation of remedies under this chapter the lines drawn by a State subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn, or maintained or crossed for the purpose, and had the effect of segregating children among public schools on the basis of race, color, sex, or national origin, or where it is established that, as a result of discriminatory actions within the school districts, the lines have had the effect of segregating children among public schools on the basis of race, color, sex, or national origin.

§ 1757. Prohibition of Forced Busing During School Year—Congressional Findings.

(a) The Congress finds that—

(1) the forced transportation of elementary and secondary school students in implementation of the constitutional requirement for the desegregation of such schools is controversial and difficult under the best planning and administration; and

(2) the forced transportation of elementary and secondary school students after the commencement of an academic school year is educationally unsound and administratively inefficient.

Student Transportation Orders Incidental to Student Transfers Pursuant to School Desegregation Plans Effective Beginning with Academic School Year.

(b) Notwithstanding any other provision of law, no order of a court, department, or agency of the United States, requiring the transportation of any student incident to the transfer of that student from one elementary or secondary school to another such school in a local educational agency pursuant to a plan requiring such transportation for the racial desegregation of any school

in that agency, shall be effective until the beginning of an academic school year.

"Academic School Year" Defined.

(c) For the purpose of this section, the term "academic school year" means, pursuant to regulations promulgated by the Commissioner, the customary beginning of classes for the school year at an elementary or secondary school of a local educational agency for a school year that occurs not more often than once in any twelve-month period.

Orders Subject to Provisions of Section.

(d) The provisions of this section apply to any order which was not implemented at the beginning of the 1974-1975 academic year.

§ 1758. Reasonable Time for Developing Voluntary School Desegregation Plans Following Detailed Notice of Violations.

Notwithstanding any other law or provision of law, no court or officer of the United States shall enter, as a remedy for a denial of equal educational opportunity or a denial of equal protection of the laws, any order for enforcement of a plan of desegregation or modification of a court-approved plan, until such time as the local educational agency to be affected by such order has been provided notice of the details of the violation and given a reasonable opportunity to develop a voluntary remedial plan. Such time shall permit the local educational agency sufficient opportunity for community participation in the development of a remedial plan.

42 U. S. C.

SUBCHAPTER IV—PUBLIC EDUCATION.

§ 2000c. Definitions.

As used in this subchapter—

(a) "Commissioner" means the Commissioner of Education.

(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, sex or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

(c) "Public school" means any elementary or secondary educational institution, and "public college" means any institution of higher education or any technical or vocational school above the secondary school level, provided that such public school or public college is operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

(d) "School board" means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

§ 2000c-6. Civil Actions by the Attorney General—Complaint; Certification; Notice to School Board or College Authority; Institution of Civil Action; Relief Requested; Jurisdiction; Transportation of Pupils to Achieve Racial Balance; Judicial Power to Insure Compliance with Constitutional Standards; Impleading Additional Parties as Defendants.

(a) Whenever the Attorney General receives a complaint in writing—

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, sex or national origin,

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one

school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

Persons Unable to Initiate and Maintain Legal Proceedings.

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

"Parent" and "Complaint" Defined.

(c) The term "parent" as used in this section includes any person standing in loco parentis. A "complaint" as used in this section is a writing or document within the meaning of section 1001, Title 18.

SUBCHAPTER IX—MISCELLANEOUS PROVISIONS.

§ 2000h-2. Intervention by Attorney General; Denial of Equal Protection on Account of Race, Color, Religion, Sex or National Origin.

Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on account of race, color, religion, sex or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if

the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief, as if it had instituted the action.

§ 2000h-3. Construction of Provisions Not to Affect Authority of Attorney General, etc., to Institute or Intervene in Actions or Proceedings.

Nothing in this Act shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or of the United States or any agency or officer thereof under existing law to institute or intervene in any action or proceeding.

Supreme Court, U. S.
FILED
FEB 18 1976
MICHAEL RODAK, JR. CLERK

No. 75-164

In the Supreme Court of the United States

OCTOBER TERM, 1975

PASADENA CITY BOARD OF EDUCATION, ET AL.,
PETITIONERS

v.

NANCY ANNE SPANGLER, ET AL., AND
UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75–164

PASADENA CITY BOARD OF EDUCATION, ET AL.,
PETITIONERS

v.

NANCY ANNE SPANGLER, ET AL., AND
UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the court of appeals (Pet. App. A1–A33) are reported at 519 F. 2d 430. The opinion and order of the district court (App. 452–465) is reported at 375 F. Supp. 1304. Other opinions in this litigation appear at 427 F. 2d 1352, 415 F. 2d 1242, 384 F. Supp. 846, and 311 F. Supp. 501 (App. 3–4, 97–133).

JURISDICTION

The judgment of the court of appeals was entered on May 5, 1975. The petition for a writ of certiorari was filed on July 30, 1975, and was granted on November 11, 1975. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a school system automatically becomes a "unitary school system" immediately upon compliance with a desegregation plan developed by order of the district court.

2. Whether the district court's injunctive supervision of the pertinent activities of a school system that has engaged in racial discrimination should be lifted before the school system has established that it has been purged of the effects of that discrimination.

3. Whether a desegregation case in which the United States has intervened as a plaintiff becomes moot when the individual plaintiffs leave the school system.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part:

> No State shall * * * deny to any person within its jurisdiction the equal protection of the laws.

The relevant statutory provisions are set out at Pet. Br. A1–A18.

STATEMENT

A. PROCEDURAL HISTORY

1. THE DESEGREGATION PROCEEDINGS

On August 28, 1968, several students in the public schools of Pasadena, California, and their parents filed a class action complaint seeking injunctive relief from alleged unconstitutional racial segregation in the district's high schools. On November 19, 1968, the United States moved to intervene in the case pursuant to Title IX, Section 902, of the Civil Rights Act of 1964, 78 Stat. 266, 42 U.S.C. 2000h–2.[1] The court granted the motion on December 6, 1968.[2]

The trial commenced on January 6, 1970, and the court heard testimony for nine days. On January 23, 1970, the district court entered a judgment holding that the school system was segregated as a result of the intentional acts and omissions of the defendants. It enjoined racial discrimination throughout the school district and directed the defendants to develop a de-

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[1] The compaint in intervention "brought into the case the entire Pasadena Public School system." 415 F. 2d at 1243. It asked the district court to enjoin further discriminatory practices at all schools and to order the school board to develop and implement a plan that would eliminate the effects of past discrimination. *Ibid.*

[2] On February 14, 1969, the district court granted the school board's motion to strike the allegations concerning elementary, junior high, and special schools. On August 28, 1969, the court of appeals reversed and remanded with instructions to reinstate the allegations. 415 F. 2d at 1248. It held that "the district court erroneously concluded that the United States was limited in the relief it could obtain, to the relief ~~sought~~ Sought by the plaintiffs" (*id.* at 1247).

segregation plan under which no school would enroll "a majority of any minority students," and under which teachers and professional staff members would be hired, assigned, and promoted on a non-discriminatory basis (App. 3–4). An extensive opinion (App. 97–133) explaining the court's decision was released later.

The school board voted not to appeal the judgment (App. 271–272) and, on February 18, 1970, filed its proposed plan, the "Pasadena Plan" (App. 5–57).[3] On March 2, 1970, parents of other children attending the Pasadena public schools sought to intervene for the purpose of appealing (App. 453). The district court denied the motion on March 4, 1970, and the court of appeals affirmed. 427 F. 2d 1352, certiorari denied, 402 U.S. 943.

On March 10, 1970, the district court approved the Pasadena Plan (App. 96).[4]

2. THE PRESENT PROCEEDINGS

On January 15, 1974, the school board filed a motion to dissolve the district court's injunction or to implement an alternative plan (App. 232–233). On May 3, 1974, after a comprehensive hearing on the

[3] Two weeks later the school board submitted an amendment designed to reduce costs and to achieve more contiguous attendance areas and better proximity to school facilities (see App. 58–95).

[4] Certain amendments were proposed by the school board. After the parties had agreed upon them, the district court approved them in August 1970 (App. 134–136).

motion, the court denied the motion (App. 452–459).[5] The district court denied petitioners' motion for a stay pending appeal.[6] On May 5, 1975, the court of appeals affirmed the judgment of the district court (Pet. App. A1–A33).

B. FACTS

The Pasadena Unified School District includes the city of Pasadena, the town of Altadena, the city of Sierra Madre and portions of Los Angeles County (App. 98). At its broadest points, the district measures approximately 9.37 miles from east to west and 6.31 miles from north to south (see the map in App. Rear Folio). As of October 5, 1973, its thirty-three regular schools[7] and eight "special" schools enrolled 25,414 students, of whom 11,188 (44 percent) were white and 10,155 (40 percent) were black. 3,087

[5] Evidence presented at the hearing showed that petitioners had appointed five persons to administrative positions in July 1973 without following the procedures set forth in the Pasadena Plan. Compare App. 514–518 with App. 49–56. On August 12, 1974, the court adjudged petitioners in contempt for having violated the Plan in making those appointments. 384 F. Supp. 846. Petitioners' appeal from that judgment was heard by the court of appeals on November 5, 1975.

[6] We are lodging with the Clerk of this Court copies of petitioners' June 28, 1974, motion for stay; of their memorandum of points and authorities and affidavits in support thereof; and of our July 12, 1974, response and supporting memorandum.

[7] Fourteen "primary" (grades K–3) schools; eleven "elementary" (grades 4–6) schools; four junior high schools (grades 7–8); and four high schools (App. 413–417).

students of Spanish origin made up the majority of the remaining 16 percent (App. 417).

1. THE DISTRICT COURT'S 1970 FINDINGS OF FACT

The district court found that the Pasadena school system had been unconstitutionally segregated for fifteen years because of the acts and omissions of the school board (App. 97–126). It expressed the applicable legal standard as follows (App. 128):

> A violation of the Fourteenth Amendment has occurred when public school officials have made a series of educational policy decisions which were based wholly or in part on consideration of the race of students or teachers and which have contributed to increasing racial segregation[8] in the public school system.

The court observed that, in the preceding fifteen years, Pasadena had experienced a high degree of racial separation, especially in its elementary schools.[9]

[8] Although the court used the terms "racial segregation" and "racial imbalance" interchangeably in its findings and conclusions (App. 99, n. 4), the findings and conclusions expressly recognize a distinction between "*de facto* or adventitious segregation" and the situation presented this case, in which "the existing segregation of pupils and teachers is inseparable from the discriminatory practices and policies of the defendants" (App. 132).

[9] In each of those years, more than 90 percent of the district's white elementary-age children had attended majority-white schools, while more than 30 percent of its black elementary-age children had attended majority-black schools (App. 100). During the 1969–1970 school year, 85 percent of the district's black elementary-age children attended its eight majority-black elementary schools, and 93 percent of its white elementary-age children attended the remaining elementary schools (App. 99); of the 30,622 students then enrolled, 9,173 (30 percent) were black (App. 98); but thirteen of the district's elementary schools were less than five

The United States presented extensive evidence, and the district court made detailed findings, that this separation had resulted, in large measure, from a series of deliberate actions by the school board.

a. The court described a series of racial gerrymanders and manipulations of student assignments designed to avoid assignment of white students to nearby majority-black schools and designed to confine most blacks to such schools (App. 100–109). The court found, for example, that although the school board often had changed attendance zones in order to combine areas of predominantly black attendance (App. 102–103), it had never since 1954 "made an attendance area change that involved assigning students from a majority white residential area to a majority black school" (App. 100).

b. The court gave examples of the transportation of white students past under-enrolled majority-black schools to more distant (and often overcrowded) majority white schools (App. 100–104, 109, 122–123).

c. The court found that the school board had "granted transfers that they knew or should have known were wholly or at least in part motivated by racial considerations, including baseless transfers that had the effect of intensifying racial segregation in the Pasadena schools" (App. 125).[10]

percent black in enrollment, two were more than 90 percent black, three were more than 80 percent black, two were more than 60 percent black, and another was 59 percent black (App. 99).

[10] The school board also experimented with a variety of "open enrollment" and "free choice" plans of student assignment (App.

d. The court found that the school board had a "policy and practice of assigning most black teachers to black schools" (App. 116) and that it also discriminated in the hiring of black teachers and administrators (App. 112–118). Some identifiably white schools had never been assigned a black teacher or administrator (App. 112). Other schools had been assigned only one. The court found that the school system had hired only one black nurse, who was assigned to predominantly black schools (App. 114). Officials assigned black substitute teachers to majority-black schools and allowed white substitute teachers to avoid teaching at identifiably black schools (App. 113–114), and they assigned less experienced teachers with less education to majority-black schools more frequently than to majority-white schools (App. 114).

e. The court found that the school board planned the construction of new facilities, additions to existing facilities, and the placement of transportable classrooms in a manner that contributed to racial segregation (App. 103, 119–123). The school board selected both the location and the capacity of new schools in a manner calculated to ensure that each new school

105–106, 150, 151, 153–163, 173–197, 198–216, 217–220, 222–223, 225–231) that, "until 1968, permitted a small number of both black and white students to escape Negro schools" (App. 106). None of these experiments diminished the racial separation that had been created, in part, by other school board actions (App. 106, 137–149, 165–172, 193–195, 197, 198–200, 209–216, 221–227). Nor did a "free choice" summer school experiment in 1973 (App. 510–511).

would be racially imbalanced at its opening. Several of these schools were abnormally small, apparently in order to serve only a single, racially-identifiable neighborhood (App. 120). When a small school in a black neighborhood became overcrowded, the school board added several transportable classrooms; a nearby school with overwhelmingly white enrollment was not used to capacity (App. 103, 121–122). The same pattern was followed in building permanent additions to schools in black neighborhoods (App. 121).

2. THE PASADENA PLAN AND ITS IMPLEMENTATION

a. The Pasadena Plan "represents the work and thinking of the Pasadena City Board of Education, the superintendent, and the [school district] staff under his direction" (App. 9). Its student assignment provisions were designed to comply with the district court's mandate that no school have an enrollment of which any one minority group constitutes the majority (App. 9).[11]

The Plan divides the elementary schools of the district into four "ethnically balanced areas," each served by a number of "primary" (grades kindergarten ("K") to 3) and "upper grade" (grades 4–6) schools (App. 9–10). The Plan reorganized Pasadena's traditional elementary (K–6) schools into separate K–3 and 4–6 facilities in order to enable the

[11] The Plan also includes detailed procedures for the hiring and promotion of teachers and administrators (App. 47–57).

school system to "provide specialization which is important to guarantee improvement in basic skills."[12] The reorganization also facilitates retention of "neighborhood" schools by allowing students to "walk to a nearby school for part of their elementary schooling and be transported with students in their neighborhoods to another school" for the other part (App. 10). The district's junior high schools serve grades 7 and 8 (App. 27); its senior high schools serve grades 9–12 (App. 134).

The Plan allows students to transfer from their assigned schools to other schools in situations of "urgent hardship" involving "family circumstances and/or medical, safety, psychological, or curriculum considerations" (App. 35). The school district provides transportation of "all pupils attending schools outside their normal areas" (App. 45). The Plan contemplated the need for continuing evaluation, modifications and adjustments in attendance zones and student assignments in order to achieve and maintain succesful integration (App. 9, 10, 27, 37).

b. Pasadena's white enrollment had been declining for many years (App. 347–348, 379, 421, 600, 601).[13]

[12] App. 10. Superintendent Cortines, responding to questions at a public meeting of the school board on January 15, 1974, stated that the majority of his administrative staff preferred the K–3, 4–6 grade structure (App. 584).

[13] In 1964, for example, 21,695 white students were enrolled in the district's public schools; in 1966, 20,958; in 1968, 19,008; and in 1969, 17,859. In 1970, the year in which the Pasadena Plan was implemented, the number was 15,647. White enrollment continued to decline after 1970 but at a steadily decreasing rate. See App. 421.

The school board submitted evidence that this decline accelerated during the twelve-month period prior to implementation of the Pasadena Plan (App. 421, 601) and asked the court to infer that the pending implementation of the Plan was the sole cause of this.[14]

The United States presented evidence showing that the decline in white enrollment was not necessarily attributable to the school system's desegregation efforts (App. 386–387, 393, 531–543).[15] We presented a study of ninety-one California school districts, including desegregating systems, which revealed that "those districts that decline[d] the most in white enrollment were districts that were becoming more segregated rather than desegregated" (App. 561).

Evidence introduced by the plaintiffs and the United States disclosed that many factors may have contributed to Pasadena's loss of white students (App. 377–379, 505). These factors included the declining birth rate and an economic retrenchment that had diminished the availability of employment in the Pasadena area. The evidence indicated that some of the loss in the months prior to implementation of the Pasadena Plan could have been anticipated (App. 393, 540–542) because the trend of declining white enrollment in Pasadena had closely paralleled the California statewide trend for several years (App. 393, 505),

[14] See Tr. Feb. 28, 1974, at pp. 493–541.

[15] Henry Marcheschi, then president of the school board, stated at the December 18, 1973, meeting of the board that "it would be folly to blame all of this drop [in white enrollment between 1970 and 1973] to [*sic*] the Pasadena Plan" (App. 298).

and that school district employees who developed the Pasadena Plan were aware of the trend at that time, in fact anticipated its continuation under the Plan, and took account of it in preparing the Plan (App. 508–510).[16] In addition, evidence demonstrated that following implementation of the Pasadena Plan the district's racial composition began to stabilize (App. 325, 380).[17]

The district court resolved the conflict in the evidence by concluding that there was no proof that any "white flight" was attributable to the Plan (App. 454). The court of appeals did not disturb these findings. See Pet. App. A8 (opinion of Ely, J.); *id.* at A26 (Wallace, J., dissenting).

In subsequent proceedings petitioners have presented evidence "that if the school district is permitted to maintain the status quo in the assignment of students under the Pasadena Plan, the ethnic changes that are occurring at the present time throughout the school district will stabilize and the ethnic imbalance now being experienced in grades 4 through 8 will disappear" (June 28, 1974, Affidavit

[16] The school board acknowledged in the Pasadena Plan itself the district's history of white enrollment decline and black enrollment increase (App. 8); the Plan provided that "minor modifications and adjustments" in student assignments might be necessary in the future (App. 9).

[17] See also App. 476 (former school board president Henry Marcheschi testifying that "what we are experiencing now is no longer a phenomenon of white flight but one of white boycott").

of Peter F. Hagen, at p. 4).[18] This prediction now has been supported by testimony given during proceedings subsequent to the decision of the court of appeals. During a hearing on September 15, 1975, concerning the conversion of a "regular" K–3 school to a "fundamental" K–3 school, school board president Dr. Henry S. Myers, Jr., testified (Sept. 15, 1975, Tr. 16):

> We had a large increase in enrollment last year, about 600 more students than we had the year before. This year I have done a lot of preliminary checking, and all of our principals report significant increases of enrollment—pre-enrollment, pre-to-school opening. It is entirely possible that we have reversed the flight, the white flight, if you will, from Pasadena and have a significant amount new enrollment.

[18] In affidavits dated December 19, 1973, and submitted in support of petitioners' January 15, 1974, motion for relief, Mr. Marcheschi and Superintendent Ramon C. Cortines stated that decreasing white enrollments and increasing minority enrollments would make it a "practical impossibility" to comply with the Pasadena Plan in the future (App. 236, 237). In an affidavit filed by petitioners in support of their June 28, 1974, motion for a stay of the district court's judgment, however, Peter F. Hagen, the district's administrative director for planning, research and development, directly contradicted the Marcheschi and Cortines affidavits. Based on his post-trial analysis of demographic and enrollment data compiled by district employees, Mr. Hagen predicted that trends evident as of June 28, 1974, would make full compliance with the Pasadena Plan progressively easier. Superintendent Cortines subscribed to that prediction in his own supporting affidavit of the same date, and both he and Mr. Marcheschi testified, at trial, that full compliance with the Pasadena Plan can be achieved (App. 468–469, 473). The June 28, 1974, Hagen and Cortines affidavits have been lodged with the Clerk of this Court.

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See also *id.* at 146 (Peter Hagen, the school district's administrative director of planning, research and development, testifying that as of February 1975 Pasadena's enrollment in grades K–3 was only 39.1 percent black, and in grades 4–6 was 43.8 percent).

c. Petitioners offered evidence in an effort to establish that the Pasadena Plan had been educationally counterproductive. They attempted to show that the performance of the district's students on certain standardized tests had declined and that the performance of its black students had not improved vis-a-vis that of their white counterparts in either the school district or the Nation as a whole (App. 520–523; Pet. Exhs. AC, AK, AL, AM, AN, AO).[19]

The United States presented evidence tending to show that the plan has been an educational success in several ways. The learning environment of the district's schools, as measured by student self-esteem, attitude toward school, anxiety, and other criteria, has been stable (App. 389–391, 543–549; U.S. Exh. 24).[20] Serious disciplinary problems have been few (App. 383–385). And, under the Plan, the district has been able successfully to implement a variety of innovative educational programs and "alternatives," including special programs at its regular

[19] "Pet. Exh." refers to exhibits introduced by petitioners at the February–March 1974 hearing of this case. "U.S. Exh." refers to exhibits introduced by the United States at that hearing.

[20] Indeed, the study conducted by our expert witness disclosed a significant decrease in the anxiety level of black children between 1972 and 1973 (App. 546–547).

schools and the creation of special schools (App. 341–346, 356–375, 382, 512–513, 525, 527–528).[21]

We also presented expert testimony on academic achievement. Our expert analyzed petitioners' achievement charts and concluded that the rate of black and white students' academic growth disclosed by those charts properly should be viewed as a net gain for black students, an indication of academic success not evident prior to desegregation (App. 557–560, 564–565). In addition, the expert pointed out that the district's white students have suffered no academic setback, as compared with national norms, during the desegregation process (App. 564–566).

The district court was unpersuaded by petitioners' effort to demonstrate that the Pasadena Plan has been an educational failure (App. 458), and none of the judges of the court of appeals found any error in the district court's resolution of the issue.

The district court's resolution of this dispute has been supported by the testimony of Dr. Myers in a subsequent hearing. Dr. Myers testified (Sept. 15, 1975, Tr. 17–18, 33):

> We believe that the successes of the fundamental school, the spectacular upturn in test scores, particularly for black students and others as well, but the narrowing of the gap, the disparity between the Anglos and the blacks which, in our opinion, is the answer to the segregation problem; the results have been so spec-

[21] Superintendent Cortines testified that such innovations can continue, and the kinds of "alternatives" envisioned by the Alternative Plan (see App. 240, 243–244) can be implemented, under the Pasadena Plan (App. 511–512, 527–529).

tacular in narrowing this gap in keeping the black students' scores from dropping off that we just think that it is vital that we get the black community more involved in fundamental basic-type education.

* * * * *

We reversed our test scores dramatically after a horrible decline for the last five or six years, a dramatic upturn in all areas, not only the fundamental schools, but because of the competition that the fundamental school is giving the regular schools, their scores turned up as well.

d. The Plan has succeeded as an instrument of desegregation (see App. 403–409, 416–417, 441–447). The school board has not, however, entirely succeeded in complying with the literal terms of the district court's order that there be "no majority of any minority" in any school. During the 1971–1972 school year the black enrollment at Loma Alta school exceeded 50 percent of that school's total enrollment (App. 445, 585–586). By October 1972 four schools (Edison, Franklin, Loma Alta, and Sierra Mesa) had black enrollments in excess of 50 percent of their respective total enrollments (App. 403, 404, 406, 407, 585–586). A fifth school (Eliot Junior High) joined this group a year later (App. 417, 585–586). There has, therefore, been a slight deviation from the student assignment provisions of the Plan and the 1970 order, as interpreted by the district court.[22]

[22] The plaintiffs and the United States had not understood the decree to require continued adherence to the "no majority of any minority" provision (App. 268–269; see also Pet. App. A16, n. 4).

3. THE PROPOSED "INTEGRATED ZONE/EDUCATIONAL ALTERNATIVES PLAN"

In a recall election of October 13, 1970, Mr. Henry Marcheschi and two other candidates for school board membership unsuccessfully attempted to unseat the three board members who had voted against appeal of the district court's 1970 judgment (App. 453).

Mr. Marcheschi ultimately was elected to the board in the spring of 1971 (App. 471–472). He testified that "very early in [his] tenure as a board member" he began to develop alternatives to the Pasadena Plan (App. 474, 498). The first of the Marcheschi alternative proposals—"The New Pasadena Plan: A Recommended New Approach to Achieve Voluntary Integration and Equality of Educational Opportunity in the Pasadena Unified School District" (App. 422–434, 474, 570–580)—was presented to the school board in the fall of 1971 (App. 376, 475). The second proposal—"Neighborhood School/Integrated Zone Plan for Grades K–6: A Proposed Plan to Restore Neighborhood Schools [etc.]" (App. 474–475, 587–599)—was presented on January 9, 1973 (App. 340, 475).

Both of these proposals were designed to create freedom of choice in student enrollment; they were an outgrowth of their author's commitment to the neighborhood school concept (see, *e.g.*, App. 497) and of his belief that, although voluntary integration is desirable, racial separation in public education is preferable to desegregation compelled by court order (see App. 480–484).

Petitioners Myers, Newton and Vetterli were elected to the school board on March 3, 1973 (App. 468) on a pledge to "restor[e] neighborhood schools [and] eliminat[e] excessive educational experiments on our children" (App. 283). Mr. Marcheschi became president of the board in July 1973 (App. 472).

On July 10, 1973, the school board, on the votes of petitioners Myers, Newton and Vetterli, voted to appoint three persons to administrative positions in the school system without following the staff recruitment and selection procedures of the Pasadena Plan. This action has become the basis for a contempt citation by the district court (384 F. Supp. 846). Later in the same month, joined by Mr. Marcheschi, this majority appointed two persons to principalships without adhering to the Pasadena Plan's procedures. For this, too, these petitioners have been held in contempt. See 384 F. Supp. at 847–851; App. 514–518.[23]

The student enrollment plan that petitioners proposed as a substitute for portions of the Pasadena Plan[24] was primarily the work of Mr. Marcheschi (App. 473–474). He presented the Alternative Plan to the board on December 18, 1973 (App. 297) as a further development of his earlier proposals (App. 479–480). The Alternative Plan, like Mr. Marcheschi's earlier proposals, allows students to choose which

[23] The district court's judgment of contempt is *sub judice* on appeal, having been argued on November 5, 1975. Petitioners have conceded that they did not follow the plan's procedures, but have argued that they were not obliged to follow them.

[24] The proposed substitute, referred to as the "Alternative Plan," is reproduced at App. 239–245.

school they will attend, and it was designed to facilitate the selection by students or their parents of neighborhood schools.[25]

The Alternative Plan is limited to student enrollments in elementary (K–6) schools (App. 241–242).[26] It would eliminate specific school attendance boundaries in favor of "four racially and ethnically balanced zones * * * whose boundaries [would] coincide with the four existing areas on which the present Pasadena Plan is designed" (App. 241). Students would be permitted to attend any school within the zone of their residence; necessary transportation would be provided (App. 241). The present division of elementary schools into "primary" and "upper grade" schools would be replaced by the traditional K–6 organization, in order to "provide a sufficient number of school sites within each zone from which parents can choose the type of education most appropriate for each of their children" (App. 239).

The Alternative Plan proposes the "establishment of unique educational alternatives at each K–6 school site in addition to the ongoing traditional program being taught there" (App. 239). Parents could choose to place their children in either the regular or the "unique alternative" program at their chosen school (see App. 485). Although it briefly describes some possible "unique alternatives" (see App. 240, 243–244), the Alternative Plan is skeletal. It does not ex-

[25] Both the Alternative Plan (App. 239, 241, 242; cf. App. 299, 355) and Mr. Marcheschi's testimony (App. 479, 481, 482–484, 488–490, 497, 500, 502) make this clear.

[26] The Pasadena Plan would be retained for grades 7–12.

plain, for example, what "alternatives" would be offered, at what schools they would be offered, or whether each of the "unique" programs ultimately offered by the district would be represented in each zone. Mr. Marcheschi testified that these decisions had not yet been made (App. 484–485).

Petitioners hope that the "unique alternatives" will encourage voluntary integration by acting as "magnets," that is, by attracting students of varied backgrounds from all parts of each zone (App. 239). Petitioners offered no evidence that this would in fact occur, however, and conceded that if parents and students select "neighborhood" schools, it will not occur. The Alternative Plan acknowledges that "the ethnic balance at some sites may be altered from what it is at present" (App. 241);[27] nothing in the Plan precludes schools from regaining their former racial identifiability. When schools become racially identifiable as a result of the operation of the Alternative Plan, it provides for part-time "pairing" of "sister schools" of divergent racial compositions. For one-half day each week, students could visit the "sister school" to take advantage of any special programs at that school (App. 241).

The Alternative Plan does not establish what procedures would be followed to determine students' initial school selections or what would be done in the event more students chose a particular school than that school could accommodate. Mr. Marcheschi

[27] See also App. 299, 487–488.

testified that "the first priority for seats in [each] school would go to children who are in the neighborhood served by that school and the priority would also extend equally to children whose race is in the minority in that particular school" (App. 479). He indicated, however, that "[t]here is no way * * * to anticipate" enrollments by race under the Alternative Plan, because parents' choices of schools cannot be foreseen (App. 486–487, 492). He also acknowledged that school officials do not know how many white students would be attracted back to the school district under the proposed Alternative Plan (App. 501), and he informed the district court (App. 502):

> Your honor, I believe that returning to a system which enables Caucasian families, that provides them the right to attend their neighborhood school if they so desire is a very critical and important element in reversing the actions which I have referred to as the white boycott of our school system.
>
> * * * I believe that once we have these families moving back into our neighborhood, into our district, that it seems to me we at least have them here and can begin to be persuaded and can begin to apply the kind of incentives that it will be necessary to apply to get them to move out of their neighborhood school.

Superintendent Cortines testified that he preferred the Pasadena Plan to the Alternative Plan (App. 519, 525) and that the one-half day pairing arrangement envisioned in the Alternative Plan "does not provide

the kind of interchange among the different ethnic groups that I believe is worthwhile" (App. 526).

The district court found that at least some schools would regain their former racial identifiability if the Alternative Plan were implemented (App. 455–457; cf. App. 329, 395, 396, 485–486, 499–500, 583)[28] and that an effective implementation of the Alternative Plan would require as much (or more) student transportation as has proved necessary under the Pasadena Plan (App. 458; cf. App. 492–493, 513). Neither of these findings was disturbed by the court of appeals. Judge Ely expressly agreed that the Alternative Plan would produce racially identifiable schools (Pet. App. A8, A14); Judge Wallace, apparently agreeing (*id.* at A26–A27), disputed only the standard used by the district court to evaluate the legal consequences of that effect.

C. THE DISTRICT COURT'S OPINION

The district court denied petitioners' January 15, 1974 motion in its entirety (App. 452–459).

The district court offered several reasons for declining to dissolve its injunction and terminate its supervision over the Pasadena schools. It found that there had not been full compliance with the Pasadena Plan because several schools were operating in violation of the "no majority of any minority" rule (App. 454). It concluded that the school officials had resisted

[28] In the Pasadena Unified School District neighborhood schools would be, to a substantial degree, racially identifiable schools (App. 329, 471, 506–507, 583, Rear Folios).

the Plan and had declined to cooperate with it, so that it would be unreasonable to infer that, if left to their own devices, they would assiduously foster desegregation (App. 458). It observed that, if petitioners were allowed to return to a "neighborhood school" policy or a "freedom of choice" plan, much of the Pasadena Plan would be undone and the schools would regain their former racial identifiability (App. 455–456, 459). And it found that the Pasadena Plan had not become an instrument of wrong: it was not demonstrably the cause of "white flight" (App. 454), and it was not demonstrably the cause of any educational deficiencies (App. 458). If the latter were the case, the court reasoned, the educational deficiencies could be corrected by making suitable alterations in the Pasadena Plan, without the need to dissolve it (App. 457).

The district court also declined to replace the Pasadena Plan with the Alternative Plan, holding that the Alternative Plan would be unsuccessful as an instrument of desegregation (App. 455–456). Referring to petitioners' argument that the Pasadena Plan had been the cause of "white flight" and that the Alternative Plan could both solve this problem and desegregate the schools, the court answered (App. 457, footnote omitted):

> Hope may spring eternal, but realism exposes the folly of the belief that one who left a school district because his children were forced to attend schools with Negro children would now voluntarily choose that alternative.

"Freedom of choice" plans had failed before in Pasadena and elsewhere in California, the court found, and it concluded that petitioners had not demonstrated that such a plan would not fail again. Finally, the court found that if the Alternative Plan were to be an effective plan of desegregation it would require as much busing of students as was being used to implement the Pasadena Plan (App. 458).

D. THE COURT OF APPEALS' OPINIONS

A divided court of appeals affirmed and remanded for further proceedings; each member of the panel wrote a separate opinion (Pet. App. A1–A33). None of the opinions questions the district court's findings of fact.

Judge Ely began by emphasizing "the narrow ambit of * * * review" (Pet. App. A2). The propriety of the original judgment and injunction, and of the Pasadena Plan itself, were not before the court, Judge Ely concluded (*ibid.*):

> The only question before us now is whether the District Court erred in its determination * * * that events and circumstances occurring * * * since the Pasadena Plan was ordered implemented do not justify relief from the January 23, 1970, Decree * * * or the substitution of a substantial alteration of the original Pasadena Plan.

Judge Ely wrote that two tests governed the exercise of the district court's discretion to retain jurisdiction and continue its injunction (Pet. App. A6–

A7): whether the dangers that caused the issuance of the injunction had been attenuated to a shadow, and whether intervening events had converted the injunction into an instrument of wrong. He found that the district court had not abused its discretion in the evaluation of either factor. The dangers of segregation had not been sufficiently attenuated, Judge Ely thought, in light of the violations of the "no majority of any minority" rule and in light of the perceived intransigence of the school board, culminated by the submission of a substitute plan that the board should have known was inadequate to eliminate the effects of its earlier acts of segregation. Nor had the injunction become counterproductive; petitioners' assertions that it had caused "white flight" and educational degradation had been discredited by the district court in findings that were not clearly erroneous (*id.* at A8–A10). Judge Ely concluded that because it was not yet "clear" that disestablishment of the dual school system had been achieved, the district court was required to retain jurisdiction (*id.* at A11–A12).

As to the proposal to substitute the Alternative Plan for portions of the Pasadena Plan, Judge Ely reasoned that, once it had been established that the district court was empowered to retain jurisdiction over the Pasadena schools, it followed that the court had substantial equitable discretion to select an effective remedy (Pet. App. A13). The district court properly exercised that discretion in preferring the Pasadena Plan, which had been devised by the school board in 1970, over the school board's 1974 submis-

sion, because the latter held out less promise of successfully producing desegregation. Judge Ely concluded that, whatever virtues the Alternative Plan may possess, there was ample support for the district court's conclusion that it would not discharge petitioners' duty to achieve the greatest possible amount of desegregation (*id.* at A14), and that the district court therefore properly rejected it.

Chief Judge Chambers wrote (Pet. App. A20) that "a school district surely should not be kept under injunctions of a court forever." He found, however, that because the school board had not fully discharged its duty of compliance with the district court's unappealed 1970 injunctive degree, the judgment must be affirmed. Judge Chambers concluded (Pet. App. A21):

> I interpret Judge Ely's opinion as requiring a termination of the mandatory injunction within a very short time after the school [*sic*] again gets in compliance and I think the message is clear to the district court.
>
> * * * I have some doubt that one will find any de jure segregation after the decree has been complied with again—if all that is done is to let residence patterns shift by themselves.

Judge Wallace dissented. In his view, the district court erroneously had equated *de jure* and *de facto* segregation (Pet. App. A23, A26) and consequently had neglected to consider the question "whether the segregation foreseeable upon dissolution of the injunction is attributable to intentionally segregative actions of the school district" (*id.* at A27, footnote

omitted). Believing that a desegregation decree must be dissolved, and the jurisdiction of the district court terminated, once a school board demonstrates that the effects of its earlier segregative acts have been eradicated (*id.* at A27–A28), Judge Wallace would have remanded "for a determination whether de jure segregation still exists in the Pasadena schools" (*id.* at A30). Under this proposed remand, a "heavy burden of proof" (*ibid.*) would have been imposed upon petitioners, who would have been required to prove both the extent of segregation caused by the school board's acts and that all of the effects of these acts had been overcome. If petitioners can carry those burdens, Judge Wallace wrote, the district court should terminate its active supervision.

All three judges of the court of appeals expressly disapproved both any perpetual application of the "no majority of any minority" provision of the 1970 judgment and any requirement of annual redistricting in response to demographic changes. See Pet. App. A11 (opinion of Ely, J.); *id.* at A20 (Chambers, J., concurring); *id.* at A25 (Wallace, J., dissenting).

SUMMARY OF ARGUMENT

I

A. Most of petitioners' arguments are not pertinent to the consideration or decision of this case. Petitioners' repeated assertions that this case involves the pursuit of racial balance for its own sake are inaccurate, for the district court's 1970 opinion

catalogued extensive and systematic segregatory conduct by school officials that contributed substantially to the creation of racially identifiable schools in Pasadena. Those pervasive acts of segregation, quite similar to those considered by this Court in *Keyes* v. *School District No. 1, Denver, Colorado,* 413 U.S. 189, required the district court to conclude that a dual school system had been established by law, and consequently to take whatever action was required to eliminate racial discrimination "root and branch" (*Green* v. *County School Board,* 391 U.S. 430, 438). The "no majority of any minority" provision in the 1970 decree was, in 1970, "a useful starting point in shaping a remedy to correct past constitutional violations" (*Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1, 25).

To the extent the "no majority of any minority" provision of the decree may have become a continuing requirement of racial balance, it has properly been disapproved by the court of appeals. Likewise, the court of appeals correctly disapproved any requirement that students be reassigned to different schools annually in order to compensate for demographic changes. Petitioners disregard these aspects of the court of appeals' decision; their insistent attack upon statements of the district court disapproved by the court of appeals is wholly gratuitous.

Petitioners also intimate that this is a "busing" case and request the Court to determine whether, and to what extent, federal courts can require school authori-

ties to use transportation to implement a system of student assignments. Concern about the use of transportation is legitimate. But the current law of equitable remedies (see, *e.g., Swann, supra*) authorizes the use of transportation in a case such as this. In the district court petitioners did not challenge particular transportation requirements, but attempted instead to prove that the entire student assignment plan (rather than its transportation component in particular) was educationally disadvantageous and had led to "white flight." They failed in their proof, and the court of appeals held that the district court's findings were not clearly erroneous.

We submit that the only three points requiring consideration by the Court are whether the district court was required at the present stage of the case to terminate entirely its supervision over the Pasadena schools; whether, if some supervision is still appropriate, it can include a "regulatory" desegregation plan; and whether, if regulatory supervision is appropriate, the district court should have substituted the Alternative Plan for the Pasadena Plan.

B. As to the first point, this Court has repeatedly recognized that full implementation of the constitutional guarantees of the Fourteenth Amendment cannot be achieved unless the district courts retain jurisdiction until it is clear that disestablishment of the dual school system and all of its effects has been accomplished. Even if petitioners were correct in their

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argument that the Pasadena schools became "unitary" the moment the Pasadena Plan was implemented, this would not support petitioners' claim for termination of the district court's "passive" supervision. Continuing supervision, with or without judicial enforcement of a desegregation plan, is necessary to deter future acts of segregation by making the contempt power available and allowing the district court promptly to rectify such acts if they occur. If an injunction is appropriate even when individuals have voluntarily and completely desisted from illegal acts (see *United States* v. *W. T. Grant Co.,* 345 U.S. 629, 633), it follows that continuing judicial supervision of some sort is appropriate here, where the injunction was necessary to compel the school officials to abandon their unconstitutional practices. Judicial supervision should last until a unitary school system has been achieved and maintained for a significant length of time without additional judicial compulsion.

C. Petitioners direct a major challenge to the district court's continuation of active or regulatory supervision, including the enforcement of a mandatory desegregation plan. They contend that even if such regulatory supervision was necessary in 1970 it should now be discontinued.

Injunctions in desegregation cases, like other injunctions, are subject to the usual standards governing the equitable powers of federal courts. *Milliken* v. *Bradley,* 418 U.S. 717, 737–738; *Swann, supra,* 402

U.S. at 16. A motion for modification or dissolution of a desegregation plan therefore is an appeal to the equitable discretion of the district court. The district court may modify the injunction because of an intervening and unexpected change of circumstances, because it has achieved its purpose, or because it has become an "instrument of wrong" (*United States* v. *Swift & Co.,* 286 U.S. 106, 115). None of these conditions is present in this case.

The original decree plainly has not yet achieved its purpose. Some decisions of school officials that create or maintain racially identifiable schools have long-lasting effects. For example, school siting and capacity decisions often will have racial effects that persevere for much or all of the building's lifetime. For this and other reasons, the findings of the district court provide substantial support for the conclusion of the courts below that the past segregation in the Pasadena schools would have substantial, lingering effects. Since petitioners had not come forward with an adequate alternative remedy for those effects, continued regulatory supervision by the district court was required. See *Swann, supra,* 402 U.S. at 28.

Nor have changed circumstances made the Pasadena Plan an "instrument of wrong." Petitioners argued in the district court that the Pasadena Plan had precipitated "white flight" and had caused deterioration in the quality of education offered by the Pasadena schools. But the district court found these arguments

to be unsupported by the facts, and the court of appeals concluded that its findings are not clearly erroneous. Petitioners therefore have not established the foundation for their contention that the regulatory supervision of the district court must come to an end.

More than 100 school systems have demonstrated that the effects of segregation have been eliminated to the fullest extent possible and have been released from the regulatory supervision of the district courts. Such relief is a goal shared by school systems, the federal courts (see *Swann, supra*), the Congress (see 20 U.S.C. (Supp. IV) 1718), and the federal Executive Branch. Petitioners will have ample opportunity to obtain release from regulatory supervision once the vestiges of segregation have been eliminated from the Pasadena schools.

D. If, as we have argued, it was proper for the district court to continue its regulatory supervision of the Pasadena schools, it follows that it was proper for the court to reject the Alternative Plan. The Alternative Plan is little more than a disguised abandonment of active judicial supervision, for it has no provision for overcoming the effects of discriminatory school siting and capacity decisions and other vestiges of the *de jure* segregation carried on by school authorities. The Alternative Plan is essentially a "freedom of choice" plan. "Freedom of choice" plans have been unsuccessful in ending segregation in Pasadena and elsewhere in California,

and the district court properly concluded that nothing in the Alternative Plan held out any realistic probability of greater success.

II

The private plaintiffs have graduated from the Pasadena schools. Whether or not this moots the case as to the private plaintiffs, the presence of the United States as a plaintiff is sufficient to preserve a live case or controversy. The United States intervened pursuant to 42 U.S.C. 2000h–2, which provides that "the United States shall be entitled to the same relief as if it had instituted the action." In this case the United States sought desegregation of the entire school system, relief more extensive than had been sought by the private plaintiffs. The school authorities argued that the United States should be confined to the relief that had been sought by the private plaintiffs; the court of appeals rejected that argument, holding that our complaint in intervention properly brought into the case "the entire Pasadena Public School system" (415 F. 2d at 1243). The Attorney General has certified that this case is of general public importance—in other words, that the United States has an interest in addition to that of the private plaintiffs. Such a general public interest survives their graduation.

ARGUMENT

I

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY DECLINING TO DISSOLVE ITS INJUNCTION, TERMINATE THE PASADENA PLAN, OR IMPLEMENT THE PROPOSED ALTERNATIVE PLAN

A. MOST OF PETITIONERS' ARGUMENTS ARE NOT PROPERLY PRESENTED IN THE PRESENT POSTURE OF THIS CASE

This is a narrow case. Neither the correctness of the district court's 1970 judgment that the Pasadena school system had been segregated by the deliberate acts of its officials, nor the initial validity of the court's 1970 directive that no school in the system enroll "a majority of any minority students" (App. 3–4), was before the court of appeals. Yet petitioners seek to raise those issues here (Pet. Br. 3, 11–18), contending that the decisions of the district court are inconsistent with *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1. Petitioners direct most of their argument against certain *dicta* in the opinions of the district court [29] and a remark that the district court made during a hearing.[30] But the *dicta*

[29] See App. 456, n. 10, in which the district court equates *de facto* and *de jure* segregation. Cf. App. 99, n. 4 ("[r]acial segregation and racial imbalance are two names for the same phenomenon, racial separation").

[30] See App. 270, where the district court stated during an oral argument that the Pasadena Plan "meant to me that at least during my lifetime there would be no majority of any minority in any school in Pasadena."

of the district court are not on review here; the court of appeals has relieved petitioners of the portions of the district court's order to which they might legitimately object, and has disapproved the district court's statements upon which petitioners dwell. As a result, most of the arguments of petitioners are misdirected.

1. Petitioners proceed on the assumption that this case is one in which the district court has sought to bring about "racial balance" for its own sake. They contend, for example, that "[t]he failure of the Pasadena School Board to correct * * * racial imbalance was the primary basis on which the system was found to be a dual system" (Pet. Br. 3; see also Pet. Br. 11–13). This is a gross misinterpretation of the proceedings in this case. Absence of racial balance was not the basis for the original finding of *de jure* segregation.

In 1970 the district court was presented with extensive proof, and made detailed findings, that over a period of fifteen years the Pasadena school board had engaged in a series of deliberate, unconstitutionally discriminatory actions that created significant racial separation of students and faculty, particularly in elementary schools. See App. 97–126, 128, and our summary of these findings at pages 6–9, *supra.* The actions described by the court—among them, racial gerrymandering and the manipulation of student assignments designed to lock black students into heavily black schools and to avoid assigning whites to such schools, the transportation of white

students past under-enrolled majority-black schools to more distant "white" schools, the granting of racially-motivated transfer requests that intensified racial segregation, the practice of assigning most black teachers and black substitute teachers to black schools and permitting white substitutes to shun those schools, and the racially-motivated manipulation of school construction and transportable classroom placement—were deliberate acts that served to identify certain schools as intended, by the school board, for blacks, and others as intended for whites. *Green* v. *County School Board,* 391 U.S. 430, 435; *Swann, supra,* 402 U.S. at 18. Those pervasive, deliberate acts of segregation, causing the district's schools to become vehicles of racial discrimination, closely paralleled the segregatory acts which this Court held in *Keyes* v. *School District No. 1, Denver, Colorado,* 413 U.S. 189, to require a district court to conclude that a dual school system had been established by law. Accordingly, the board's pattern of discriminatory conduct here bestowed upon the district court

> the affirmative duty to take whatever steps might be necessary to convert [Pasadena] to a unitary system in which racial discrimination would be eliminated root and branch.

Green, supra, 391 U.S. at 437–438.

The 1970 decree thus responded to well-entrenched, systemic violations of the Fourteenth Amendment. The "no majority of any minority" provision of the 1970 decree was, in 1970, "a useful starting point in

shaping a remedy to correct past constitutional violations." *Swann, supra,* 402 U.S. at 25.

2. Petitioners nevertheless contend that, by 1974, the "no majority of any minority" requirement had become nothing more than a requirement of racial balance for its own sake (Pet. Br. 11–13). Petitioners contend that this requirement is a rigid racial quota (Pet. Br. 11), and that its status as such is demonstrated by the district court's statement during a hearing in 1974 that "at least during my lifetime there [will] be no majority of any minority in any school in Pasadena" (App. 270). However, each of the judges of the court of appeals (quite properly, in our view) disapproved both the district court's statement and the "no majority of any minority" rule, to the extent that either indicated a continuing, rigid insistence upon some particular degree of racial balance. See Pet. A11 (Ely, J.); *id.* at A20 (Chambers, C.J., concurring); *id.* at A25 (Wallace, J., dissenting). Petitioners' insistent attack upon these statements of the district court is therefore wholly gratuitous.

3. Petitioners also contend that the district court lacks the power to compel them to undertake the annual reassignment of students in order to achieve a particular degree of racial balance (Pet. Br. 13–14, 16–18). To the extent such a requirement may be imputed to the district court, it was an outgrowth of the "no majority of any minority" provision in the 1970 judgment. It, too, has been disapproved by the court of appeals. See Pet. App. A11 (Ely, J.); *id.*

at A20–A21 (Chambers, C.J., concurring); *id.* at A25 (Wallace, J., dissenting). The court of appeals correctly held that there is no need for annual student reassignment to achieve the maximum feasible degree of racial balance. Accord, *Mapp* v. *Board of Education,* 525 F. 2d 169 (C.A. 6); *Calhoun* v. *Cook,* 522 F. 2d 717 (C.A. 5), rehearing denied, 525 F. 2d 1203 (C.A. 5); *Morgan* v. *Kerrigan,* C.A. 1, No. 75–1184, decided January 14, 1976, slip op. 32–33. A redrawing of school attendance zones after the desegregation decree is first approved may sometimes be necessary in order to eliminate the continuing effects of past segregation, and, to that extent, the district court in this case retains the authority to revise its injunction. See 20 U.S.C. (Supp. IV) 1707.[31] But this case no longer presents the problem of redrawing of attendance zones for any other purpose. As Chief Judge Chambers wrote (Pet. App. A21), it is not an act of segregation for racial imbalance to occur under a court decree "if all that is done is to let residence patterns shift by themselves." See also *Swann, supra,* 402 U.S. at 31–32.

4. Petitioners intimate that this is a "busing" case requiring the Court to decide whether, and to what extent, federal courts can require school authorities to use transportation to implement a system of student assignments (Pet. Br. 4–5, 11). Cf. *Swann, supra,* 402 U.S. at 30–31.

[31] 20 U.S.C. (Supp. IV) 1707 provides that reassignment is not necessary if residential patterns change *after* a district court has determined that all vestiges of segregation have been eliminated.

The concern about transporting school children to accomplish desegregation is a legitimate one that may call for the further attention of the Court in an appropriate case. But petitioners made no record in the district court that would now permit a reexamination of busing as a remedy on the basis of experience with that remedy here,[32] and in light of accumulated experience in other communities across the nation.[33] The current law of equitable remedies in school desegregation cases supports transportation in a case such as this. *Swann* v. *Board of Education, supra; Davis* v. *School Commissioners,* 402 U.S. 33. It is, of course, always open to litigants to seek judicial reassessment of precedent, but the materials for reassessment must be provided. To do so is not to question *Brown I's* dispositive constitutional objection to *de jure* segregation. *Swann* shows that transportation is an equitable remedy whose "task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution." 402 U.S. at 16.

[32] To the extent that petitioners attempted to show in the district court that the Pasadena Plan had caused "white flight" or deterioration in educational quality, they failed in their proof. See pages 11–16, *supra*; pages 54–55, *infra.*

[33] See, *e.g.*, Symposium, *The Courts, Social Science, and School Desegregation,* 39 L. and Contemp. Prob. 1–432 (1975); Goodman, *De Facto School Segregation: A Constitutional and Empirical Analysis,* 60 Cal. L. Rev. 275 (1972); Pettigrew, *Racial Discrimination in the United States* (1975); St. John, *School Desegregation Outcomes for Children* (1975); Comment, *School Desegregation After Swann: A Theory of Government Responsibility,* 39 U. Chi. L. Rev. 421 (1972); Mills, *The Great School Bus Controversy* (1973).

Brown II also remarked the "practical flexibility" that characterizes equitable decrees. 349 U.S. at 300. If, as appears to be the case, petitioners now seek to challenge court-ordered transportation as a futile or damaging response to *de jure* segregation, they did not focus their case below to that end.[34] Their proof below was not guided by an articulation of the purpose of student transportation under a decree—whether it is designed to produce the approximate degree of integration that would have existed absent a violation of the Fourteenth Amendment, to repair psychological injury inflicted by the state, to cure educational deficiencies traceable to *de jure* segregation, or perhaps to achieve some other or additional purpose (see n. 42, *infra*). Accordingly, petitioners failed to prove that transportation lacks utility in achieving the articulated remedial goal. In its present

[34] Instead, in the board's closing argument during the hearings on its present motion in the district court, counsel for the board stated (App. 568):

"* * * I as a lawyer in this court have not regarded the busing problem or the busing question as an issue in this case. We are going to have busing, your Honor. The board intends to continue busing. Any child may bus, as I have said, under the alternative plan within his zone."

The district court found that "the evidence shows that as much or more busing would be necessary to accomplish the ends of an integrated school system under the Alternative Plan as is currently required to achieve the same ends under the Pasadena Plan" (App. 458). See App. 492–493, 513.

posture, this case is not an appropriate vehicle for the kind of reassessment petitioners ask this Court to undertake.

We submit, therefore, that much of petitioners' presentation in this Court is superfluous. This case in its present posture does not require the Court to pass upon the arguments we have discussed above. The case does, however, require disposition of three points: (1) whether the district court was required to terminate entirely its supervision of the Pasadena schools; (2) whether, if continuing supervision is appropriate, that supervision can include a "regulatory" injunction; and (3) whether, if "regulatory" supervision is appropriate, the district court should have substituted the Alternative Plan for the Pasadena Plan. We discuss these points in turn.

B. THE DISTRICT COURT IS REQUIRED TO RETAIN JURISDICTION IN A DESEGREGATION CASE UNTIL THE EFFECTS OF SEGREGATION HAVE BEEN ELIMINATED AND FURTHER DISCRIMINATORY ACTS ARE NOT A FORESEEABLE POSSIBILITY

In a desegregation case the district court "has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Louisiana* v. *United States*, 380 U.S. 145, 154. In the exercise of that power and duty

a district court usually must retain jurisdiction over the case for a lengthy period of time, a practice this Court has discussed and approved as a necessary tool to achieve the goal of "eliminat[ing] from the public schools all vestiges of state-imposed segregation." *Swann, supra,* 402 U.S. at 15.

In 1955 this Court recognized that full implementation of the constitutional commands of *Brown* v. *Board of Education,* 347 U.S. 483 (*Brown I*), "may require solution of varied local school problems." *Brown* v. *Board of Education,* 349 U.S. 294, 299 (*Brown II*). Accordingly, it directed the courts to "retain jurisdiction * * * [d]uring this period of transition" (*id.* at 301). Retention of jurisdiction by district courts in school desegregation cases has been required since *Brown II*. In *Raney* v. *Board of Education,* 391 U.S. 443, 449, the Court wrote:

> In light of the complexities inhering in the disestablishment of state-established segregated school systems, *Brown II* contemplated that the better course would be to retain jurisdiction until it is clear that disestablishment has been achieved.

And in *Green, supra,* 391 U.S. at 439, the Court stated:

> the [district] court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed.

See also *Swann, supra,* 402 U.S. at 21, 28. Cf. *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19, 21; *Carter* v. *West Feliciana Parish School Board,* 396 U.S. 290, 292 (Harlan, J., concurring).

The need to retain jurisdiction until the objectives of the decree have been achieved is plain. In "a system that has been deliberately constructed and maintained to enforce racial segregation" (*Swann, supra,* 402 U.S. at 28) it is not enough to undo that segregation for an instant. The deeply ingrained nature of state-imposed racial separation, which has been caused by deliberate acts of elected officials that serve to stamp an enduring racial label on each school, makes it necessary and proper for the court to supervise the desegregation process, not only to achieve desegregation, but also to ensure the perpetuation of that status (*i.e.,* a status in which *de jure* segregation and the effects of past *de jure* segregation have been eliminated; see pages 49–58, *infra*).

So far as we are aware, only one school district ever has been completely released from the jurisdiction of a district court upon successfully desegregating its schools.[35] Other school districts have been released from the active supervision of the district court (see pages 56–57, *infra*). Because the defendants in school desegregation cases are public officials, and because federal courts should not become permanently

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[35] In *Mays* v. *Sarasota County Board of Public Instruction,* M.D. Fla., No. 4242, decided September 3, 1975, the district court found that (Order, p. 2) "[v]estiges of state imposed segregation have been removed from the operation of the public school system in Sarasota County. There is no evidence countering the conclusion that the unitary school system now established in Sarasota County has stabilized." Accordingly, the court dismissed the action. The plaintiffs expressly consented in a memorandum that praised the defendants' fulfillment of their constitutional duty.

involved in the administration of local schools, detailed "regulatory" injunctions ultimately should give way to general permanent injunctions against racial discrimination. In this latter or "passive" stage the district court would act only if one of the parties to the case alleged that the officials were violating its general injunction against discrimination.

Petitioners have sought, however, not only termination of the regulatory supervision of the district court, but also termination of its general injunction. In support of this petitioners argue here (Pet. Br. 4, 14–16), as they did in the district court, that the Pasadena schools became "unitary" the moment the Pasadena Plan was implemented. Even if this argument were correct,[36] it would not support petitioners' claim for termination of the district court's passive supervision. Continuing supervision is necessary to deter future acts of segregation by making the contempt power available and by insuring prompt rectification if such acts occur. Since the school board has demonstrated a proclivity to engage in such unconstitutional acts (the injunction otherwise would not have been necessary), the danger of repetition is present whether or not Pasadena is, at this moment, a "unitary" school system.

Even if petitioners had voluntarily and completely desisted from their pattern of unconstitutional acts, it still would be appropriate to enjoin them from future unconstitutional acts. *United States* v. *W. T. Grant*

[36] But see pages 51–53, *infra*.

Co., 345 U.S. 629, 633. *A fortiori* it is appropriate to continue judicial supervision when judicial intervention was necessary to force the school board to abandon its unconstitutional practices. The judicial supervision should last until a unitary school system has been achieved and maintained for a significant period of time without the need for additional judicial intervention. Whether complete dissolution would then be appropriate should rest, as do other matters of equity, in the informed discretion of the district court.[37]

C. CONTINUOUS AND ACTIVE SUPERVISION BY THE DISTRICT COURT IS NECESSARY UNTIL IT CAN DETERMINE WITH CONFIDENCE THAT THE VESTIGES OF SEGREGATION HAVE BEEN ELIMINATED

Petitioners direct their major challenge not to the district court's retention of jurisdiction, but to the continuation of active or regulatory supervision of the

[37] Courts of appeals have declined to dissolve general prohibitory injunctions after even extended periods of compliance. See, *e.g.*, *Walling* v. *Harnischfeger Corp.*, 242 F. 2d 712, 713 (C.A. 7) (dissolution refused after 12 years of compliance because "compliance is just what the law expects"); *Goldberg* v. *Ross*, 300 F. 2d 151 (C.A. 1) (dissolution refused after eight years of compliance); *Wirtz* v. *Graham Transfer and Storage Co.*, 322 F. 2d 650 (C.A. 5) (dissolution refused after six years of compliance); *Tobin* v. *Alma Mills*, 192 F. 2d 133 (C.A. 4) (dissolution granted after nine years on showing of "specific hardship"). See also *Brooks* v. *County School Board*, 324 F. 2d 303 (C.A. 4) (dissolution denied in the absence of hardship caused by the injunction). See generally Tomlinson, *Modification and Dissolution of Administrative Orders and Injunctions*, 31 Md. L. Rev. 312 (1971); Comment, *Dissolution and Modification of Federal Decrees on Grounds of Change of Attitude*, 25 U. Chi. L. Rev. 659 (1958).

affairs of the school system. Their reliance on what we may characterize as an "instant unitariness" theory (see, *e.g.*, Pet. Br. 4) is both unsupported and unpersuasive.

The injunctions through which district courts carry out their duty to eliminate racial discrimination "root and branch" (*Green, supra,* 391 U.S. at 438) are, like other injunctions, subject to the usual standards governing the equitable powers of federal courts. *Swann, supra,* 402 U.S. at 16; *Milliken* v. *Bradley,* 418 U.S. 717, 737–738. Cf. *Rizzo* v. *Goode,* No. 74–942, decided January 21, 1976, slip op. 13–14. A motion for approval of a modification of a desegregation decree, or for termination of regulatory supervision, therefore, is an appeal to the equitable discretion of the court, and a federal court has the power to modify or suspend an injunction that it has imposed. *System Federation* v. *Wright,* 364 U.S. 642, 646–647; *United States* v. *Swift & Co.,* 286 U.S. 106. The power is "inherent in the jurisdiction of the chancery." *Id.* at 114; *Lubben* v. *Selective Service System Local Board No. 27,* 453 F. 2d 645, 651 (C.A. 1).

The district court need not exercise this power simply upon the request of the person enjoined, or upon his assurance of good faith compliance in the future. The court has a right to be skeptical about such assurance; it was, after all, the deliberate segregative acts of the school system that brought about the need for an injunction. The regulatory supervision of the district court need not, and indeed should not,

come to an end until the injunction has served its purpose of disestablishing the dual school system and producing a system "without a 'white' school and a 'Negro' school, but just schools." *Green, supra,* 391 U.S. at 442.[38]

Modification of the injunction may, under equitable principles, be appropriate for other reasons. A showing of changed circumstances may be sufficient to justify the exercise of the power (*Dombrowski* v. *Pfister,* 380 U.S. 479, 492), but the changes alleged either must have been "unforeseen" (*United States* v. *Swift & Co., supra,* 286 U.S. at 119) or must have caused the injunction to become an "instrument of wrong" (*id.* at 115; *Lubben* v. *Selective Service System Local Board No. 27, supra,* 453 F. 2d at 651). And, in either event, the party seeking relief from the injunction must bear the burden of proving that the change will not "prejudice * * * the interests of the classes whom * * * [the injunction] was intended to protect." *Swift, supra,* 286 U.S. at 117–118. Cf. *Chrysler Corp.* v. *United States,* 316 U.S. 556, 567 (Frankfurter, J., dissenting). Unless the "dangers, once substantial, have become attenuated to a shadow" (*Swift, supra,* 286 U.S. at 119), the district court should hesitate to grant the modification.

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[38] This, of course, does not preclude the possibility that some "one-race, or virtually one-race, schools" may properly exist within the district as a result of *de facto* segregation, once the racial identifiability of schools and other segregative effects caused by the board's discriminatory acts have been eliminated. *Swann, supra,* 402 U.S. at 26. See also *Davis* v. *School Commissioners, supra,* 402 U.S. at 36–38.

This approach has been adopted by Congress in Title II of the Education Amendments of 1974, Pub. L. 93–380, Section 219, 88 Stat. 518, 20 U.S.C. (Supp. IV) 1718 (emphasis added):

> Any court order requiring, directly or indirectly, the transportation of students for the purpose of remedying a denial of the equal protection of the laws *may,* to the extent of such transportation, be terminated if the court finds the defendant educational agency has satisfied the requirements of the fifth or fourteen amendments to the Constitution, whichever is applicable, and will continue to be in compliance with the requirements thereof.

This provision commits the question of termination of regulatory supervision of transportation to the sound discretion of the district courts; indeed, it seems to recognize the propriety of continued regulatory supervision unless the court finds that the school officials will continue to adhere to the Constitution after the termination of supervision. Congress specifically rejected a proposal—similar to petitioners' position here (Pet. Br. 10, 14–16)—that would have required the termination of regulatory supervision as soon as the "court finds the defendant educational agency is not effectively excluding any person from any school because of race, color, or national origin." See S. Conf. Rep. No. 93–1026, 93d Cong., 2d Sess. 155 (1974).

The plain fact is that it takes time to eradicate the effects of segregation that has continued for tens of years. The racial identifiability of schools consists not only in their student populations, but in how they

are perceived by the people of the school district; a racial identity established at least since 1930 (in the case of several schools in this case) will not vanish simply because, for four years and under court order, some children of another race also attended the school.

Some of the decisions of a school board that create and maintain racially identifiable schools have especially long-lasting effects. School siting and capacity decisions will often have racial effects that persevere for much or all of the building's lifetime. If a school board that desires white and black children to go to separate schools builds a school in the geographic center of a "black neighborhood," and the school's capacity is exactly what is necessary to serve the children of that neighborhood, the school will be racially identifiable so long as a "neighborhood schools" policy is in force and the racial character of the neighborhood remains unchanged. Moreover, the racially-motivated decisions of a school board may in turn influence the decisions of parents to take up residence in particular neighborhoods. See *Swann, supra,* 402 U.S. at 21.

The findings in the present case provide ample support for the conclusion of the courts below that the past segregation in the Pasadena school system would have substantial, lingering effects in the absence of continued regulatory supervision by the district court. The district court expressly found that school siting and capacity decisions had been racially motivated (App. 119–123). As a consequence, "'[r]acially neutral' assignment plans proposed by school authori-

ties to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or distortion of school size in order to achieve or maintain an artificial racial separation. When school authorities present a district court with a 'loaded game board,' affirmative action in the form of remedial altering of attendance zones is proper to achieve truly non-discriminatory assignments" (*Swann, supra,* 402 U.S. at 28). Moreover, the board's segregatory siting and capacity decisions, combined with its other discriminatory acts, had contributed to a pattern of racial identifiability of schools which the district court found still likely to persist in the absence of remedial measures (see pages 23–24, *supra*).

In these circumstances, the district court was warranted in concluding that petitioners, who had announced a policy hostile to the Pasadena Plan and who had not come forward with a proposal for effective alternative remedial measures, should not be entrusted with the unsupervised responsibility to eradicate the continuing effects of past discrimination in Pasadena. See App. 452–454, 459. Indeed, petitioners' proclaimed desire was to implement a policy that threatened to perpetuate the effects of the board's past discriminatory conduct (see pages 59–65, *infra*). The district court therefore properly concluded that its continued, active supervision had not yet become unnecessary. "The pattern of past conduct is not easily forsaken. Where the proclivity for unlawful activity has been as manifest as here, the decree should operate as an effective deterrent to a repetition of the unlawful conduct * * *" (*United States* v. *Crescent Amusement Co.,* 323 U.S. 173, 186). Continuing regulatory supervision is necessary here."[39]

In an attempt to forestall the force of all this, petitioners present two arguments: first, that the Pasadena schools became "unitary" on the day the Pasadena Plan was implemented, and second, that the Pasadena Plan has been counterproductive. Neither argument is persuasive.

The "instant unitariness" argument (Pet. Br. 4, 14–16) is wrong because it fails to acknowledge, let alone to grapple with, the continuing effects of the school board's acts of segregation. The argument fails for another reason as well: if, as petitioners assert, the "unitariness" of the Pasadena school system is attributable to the Pasadena Plan, then for the district court to terminate its supervision, and to allow petitioners to set aside the Pasadena Plan (as they

[39] A need for continuing active supervision may also have been perceived by the court upon the disclosure, during the hearings on petitioners' motion to be relieved of the court's injunction, that petitioners had appointed five persons to administrative positions in violation of the provisions of that injunction. This revelation has led to a citation for contempt. 384 F.Supp. 846, appeal pending, C.A. 9, No. 74–2530. The board's disregard of the procedures set forth in the Pasadena Plan for recruiting and selecting administrators is an indication that all vestiges of racial discrimination have not been eliminated. *Swann, supra,* 402 U.S. at 18; *United States* v. *Montgomery County Board of Education,* 395 U.S. 225, 231–232.

have indicated they would do), would be to allow petitioners to destroy the foundation for the dissolution of supervision. The very idea of "instant unitariness" is inconsistent with this Court's cases which hold that the district court must retain jurisdiction to supervise the sometimes difficult transition to a unitary system. See *Raney, supra,* 391 U.S. at 449; *Green, supra,* 391 U.S. at 439; *Swann, supra,* 402 U.S. at 21. We submit, in sum, that the imposition of a desegregation decree is not immediately equivalent to the creation of a unitary school system.[40]

This is not to say that a school system cannot become unitary while under a desegregation injunction. The injunction is intended to facilitate just such a transition from a dual school system to a unitary school system. But, as with other equitable remedies, the party seeking relief from the injunction must demonstrate that the purposes of the injunction have been served and that the discontinuation of regulatory supervision is appropriate. See pages 46–48, *supra;* see also *Swann, supra,* 402 U.S. at 32; *Raney, supra,* 391 U.S. at 449.

Perhaps, if continuing regulatory supervision is justified only by the long term effects of past segregation, petitioners would be entitled to prove that spe-

[40] Petitioners appear to argue that this case should be governed by a different rule because "[u]nlike many, if not most, desegregation plans, the Pasadena plan, effected integration in one fell swoop" (Pet. Br. 14). But all school systems that have been placed under desegregation orders since 1969 have been required to integrate "in one fell swoop." *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19.

cific short term effects[41] had been eliminated, and to seek modification of the injunction on that basis. But petitioners never attempted to make such a showing in the district court. By relying upon the "instant unitariness" theory they eschewed whatever relief properly would be available to them upon proof that some or all of the effects of past discrimination had, in fact, been eliminated. Cf. *Keyes* v. *School District No. 1, Denver, Colorado, supra,* 413 U.S. at 203–205, 208–211. Petitioners have a continuing opportunity to make such a factual showing in the district court. Until they have done so, however, it is unnecessary for the Court to speculate about the consequences of such proof.[42]

[41] For example, the gerrymandering of school attendance zones (App. 100–109), the transportation of white students past "black" schools to more distant "white" schools (App. 101, 109), the racially-motivated placement of transportable classrooms (App. 121–122), and discriminatory faculty assignments (App. 112–119).

[42] Proof of this nature would, in our view, require the district court to re-evaluate the busing and other relief previously ordered in light of an analysis of the specific purposes to be achieved by the relief. To the extent that the relief has been designed to overcome the specific segregatory effects of discriminatory siting and capacity decisions, long-term remedial measures might be required. If so, termination of the court's regulatory supervision could properly be made dependent upon petitioners' willingness to provide for adequate measures to remedy those specific effects. On the other hand, to the extent that the relief has been designed for more prophylactic purposes—such as assuring the elimination of possible additional, nonapparent segregatory effects of the board's discriminatory practices; overcoming the racial identifiability of schools to which the board's segregatory conduct had contributed; and assuring that such racial isolation as remains in the schools

(Continued)

Instead of introducing proof that the lingering effects of past segregation had been removed, petitioners attempted to demonstrate that the Pasadena Plan, which the school board itself had designed, had become an "instrument of wrong" (*Swift, supra,* 286 U.S. at 115) because it had precipitated "white flight" and because it had caused educational quality to deteriorate. Petitioners repeat those assertions here (Pet. Br. 5–6, 21) as if they were established as facts.

But the district court found otherwise, and the court of appeals did not disturb its findings of fact.[43] See pages 10–16, *supra.* Individual petitioners, and some employees of the Pasadena school system, subsequently have testified that whites are returning to the Pasadena schools and that students' academic per-

(Continued)

is not, and is not perceived to be, the "inherently unequal" product of *de jure* segregation (*Brown* v. *Board of Education*, 347 U.S. 483, 495)—those purposes can ordinarily be achieved in a much shorter time, and such prophylactic aspects of the relief should no longer be required after they have served their proper purpose. This follows from the general principle that a court of equity should not interfere with the self-government decisions of duly constituted school authorities (either in an initial desegregation decree, in the exercise of the court's regulatory supervision, or in refusing to terminate that supervision) except to the extent necessary to remedy a constitutional violation. See, *e.g.*, *Swann*, *supra*, 402 U.S. at 16; *Milliken* v. *Bradley*, *supra*.

[43] None of the judges of the court of appeals disputed any of the district court's findings of fact. Because "concurrent findings of two courts below [are] final here in the absence of very exceptional showing of error," *Comstock* v. *Group of Institutional Investors*, 335 U.S. 211, 214, the district court's findings of fact should be accepted here. See also *Milliken* v. *Bradley*, *supra*, 418 U.S. at 738, n. 18.

formance has improved. This case, accordingly, presents no occasion to consider how a district court should respond to a demonstration that "white flight" or educational deterioration is a consequence of a desegregation plan."

Petitioners have presented the question (Pet. Br. 2) whether a "unitary school system" must "remain subject *indefinitely*" (emphasis added) to the regulatory supervision of the district court. For the reasons we have discussed above, it is unnecessary for the Court to address this question. Petitioners have not shouldered, let alone discharged, the burden of proving that Pasadena has become a "unitary" school system.

The burden upon the school system to establish that it has become unitary, and consequently is entitled to the termination of regulatory supervision, is a heavy one, but it can be discharged. This is not the first case to be concerned with defining the duration of regulatory supervision or the conditions under which it will be terminated. More than 100 school sys-

[44] We note, however, that in seeking to raise considerations of alleged "white flight" before this Court in this case, petitioners fail to discuss or cite *United States* v. *Scotland Neck Board of Education*, 407 U.S. 484, 490–491. See also *Monroe* v. *Board of Commissioners*, 391 U.S. 450, 459; *Morgan* v. *Kerrigan*, *supra*, slip op. at 29–34 (collecting cases); *Brunson* v. *Board of Trustees*, 429 F. 2d 820, 823–827 (C.A. 4) (*en banc*) (Sobeloff, C. J., concurring). But cf. *Swann*, *supra*, 402 U.S. at 31 (relief should be "reasonable, feasible and workable"); *Davis*, *supra*, 402 U.S. at 37 ("the district judge * * * should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation."). And see generally Fiss, *The Jurisprudence of Busing*, 39 L. & Contemp. Prob. 194 (1975).

tems that the United States has sued to eradicate segregation have achieved unitary status and have been relieved of the continuing active supervision of the district courts. Relief from such supervision is a goal shared by school systems, the federal courts (see *Swann, supra*), the Congress (see 20 U.S.C. (Supp. IV) 1718), and the federal Executive Branch. Cf. *Rizzo* v. *Goode, supra,* slip op. 15–17. The school systems that have obtained such relief have done so by demonstrating their continued fidelity to the principle of nondiscrimination and by convincing the lower courts that the "dangers, once substantial, have become attenuated to a shadow." *United States* v. *Swift & Co., supra,* 286 U.S. at 119.

The United States Court of Appeals for the Fifth Circuit has established guidelines for determining whether a school system has achieved the "full compliance" to which the Court referred in *Swann, supra,* 402 U.S. at 31–32, and which justifies the termination of active supervision. A school system that has been operating under an injunctive decree of desegregation is entitled to dissolution of the regulatory injunction only after it has become, and been declared, unitary, and only if it has maintained that status for a sufficient period of time (three years is the adopted rule-of-thumb) to indicate that a regression to its prior status is not likely to occur. See *United States* v. *Texas* (*San Felipe Del Rio Consolidated ISD*), 509 F. 2d 192; *Lee* v. *Macon County Board of Education,* 455 F. 2d 978; *Calhoun* v. *Cook,* 451 F. 2d 583; *Youngblood* v. *Board of Public Instruction,* 448 F. 2d 770; *Steele* v. *Board of Public Instruction,* 448 F. 2d 767; *Wright* v. *Board of Public Instruction,* 445 F. 2d 1397.

There is no litmus paper test by which a court can determine when the time is at hand to end active judicial supervision. Each of the more than 100 cases has turned on its own facts; each district court has been required to determine whether the effects of discrimination have been eliminated, whether the officials then in charge of the schools were likely to discharge their constitutional duties without the need for intense judicial scrutiny. In this regard the Court must "rely to a large extent * * * on the informed judgment of the district courts in the first instance" (*Swann, supra,* 402 U.S. at 28; see also *Brown II, supra,* 349 U.S. at 299–301). Perhaps rules will evolve from this process as additional districts seek such relief and as, through experience, courts compile the criteria that favor relaxed supervision and those that indicate the contrary. We have set out in an appendix to this brief a description of many of the cases granting such relief, and we have reprinted for the Court's convenience illustrative orders granting relief. Illustrative memoranda for the United States discussing the propriety of such relief in particular cases have been lodged with the Clerk of this Court.

Here, however, that Pasadena has not yet shown that it qualifies for relaxed supervision under these evolving standards. Its compliance with the Pasadena Plan has been grudging at best (App. 452–454, 458–459). It has been adjudged in contempt for violations

of the Plan. 384 F. Supp. 846. Cf. App. 514–518. And petitioners have announced their intention, upon securing freedom from active judicial supervision, to discard the Pasadena Pan and to institute a system of student assignments that would perpetuate in the Pasadena schools the racial indentifiability that had resulted in substantial part from the board's segregatory conduct. Petitioners thus have failed to demonstrate their readiness, in the absence of judicial supervision, to eliminate the still-lingering effects of the board's past discriminatory conduct. The extent of racial balance resulting from a judicial decree may often change after the decree is lifted. That is no objection to the end of judicial supervision if all *de jure* segregatory conduct has ended, the effects of the prior *de jure* segregation have been elimintaed, and the new configuration merely reflects demographic patterns. See *Swann, supra,* 402 U.S. at 31–32. But petitioners have not shown that that ~~sage~~ stage has been reached here.

D. THE DISTRICT COURT PROPERLY REJECTED PETITIONERS' ALTERNATIVE PLAN

If, as we have argued, it was proper for the district court to continue its active supervision of the Pasadena schools, the only issue remaining in this case is whether it was required to adopt the proposed Alternative Plan as the instrument of that supervision. We submit that the court of appeals correctly decided that it was not. There is "a wide range of discretion in the District Court to mould the decree

to the exigencies of the particular case; and where the findings of violations are sustained, we will not direct a recasting of the decree except on a showing of abuse of discretion." *United States* v. *Crescent Amusement Co., supra,* 323 U.S. at 185. There was no abuse of discretion here.

The Alternative Plan was properly rejected because it would be the equivalent of the termination of active supervision. It is primarily a "freedom of choice" plan designed to allow students to receive their education in their neighborhood schools;[45] it is in effect a disguised abandonment of judicial supervision. But that is inappropriate: "freedom of choice" has failed to produce or achieve desegregation in Pasadena itself and elsewhere in California (App. 395–396, 455–457, 549–557; Pet. App. A12–A14); it follows that, to be effective, a plan of desegregation for Pasadena must include at least some compulsory student assignment provisions, the very sort of provisions the Alternative Plan would abolish.

In *Green, supra,* and its companion case, *Monroe* v. *Board of Commissioners,* 391 U.S. 450, this Court unanimously expressed its disapproval of "free choice" and "free transfer" plans of student enrollment that do not promise realistically to achieve de-

[45] As Judge Wallace stated in his dissenting opinion below, "the Alternative Plan is a freedom-of-choice plan and therefore an unlikely remedy for past de jure segregation * * *" (Pet. App. A27). See also *id.* at A13 (opinion of Judge Ely); App. 455.

segregation. Recognizing in *Green* (391 U.S. at 440) that "the general experience under 'freedom of choice' to date has been such as to indicate its ineffectiveness as a tool of desegregation," the Court concluded (*id.* at 440–441):

> Where it offers real promise of aiding a desegregation program to effectuate conversion of a state-imposed dual system to a unitary, nonracial system there might be no objection to allowing such a device to prove itself in operation. On the other hand, if there are reasonably available other ways * * * promising speedier and more effective conversion to a unitary, nonracial school system ,"freedom of choice" must be held unacceptable.

Similarly, in *Monroe* the Court rejected a plan under which students could "freely transfer" to a school of their choice. The Court wrote (391 U.S. at 458–459):

> Plainly, the plan does not meet respondent's "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green* v. *County School Board, supra,* at 437–438. * * * Like the transfer provisions held invalid in *Goss* v. *Board of Education,* 373 U.S. 683, 686, "[i]t is readily apparent that the transfer [provision] lends itself to perpetuation of segregation."

See also *Raney* v. *Board of Education, supra.* A "freedom of choice" plan is unacceptable if it "operate[s] simply to burden children and their parents with a responsibility [to desegregate] which *Brown*

II placed squarely on the School Board" (*Green, supra,* 391 U.S. at 441–442).

The Alternative Plan is unacceptable under these standards. Pasadena already has a method of desegregation "promising speedier and more effective" results than freedom of choice. That method, the Pasadena Plan itself, has largely desegregated the district's schools and, according to the school system's administrative director of planning and research, can continue to do so with increasing ease in the future (see note 18, *supra*). Moreover, the Pasadena Plan has not been unsuccessful educationally; serious disciplinary problems have decreased; students' attitudes toward school, toward themselves, and toward their peers has remained stable or improved; and a variety of innovative educational programs have been successfully implemented (see pages 14–16, *supra*). Petitioners' claim that the Pasadena Plan has been responsible for "white flight" was not supported by proof (see pages 10–14, *supra*). And, according to Superintendent Cortines, the kinds of innovative "educational alternatives" envisioned in the Alternative Plan can be implemented under the Pasadena Plan (see note 21, *supra*) and are as likely to attract white families to the school district under the Pasadena Plan as under the proposed modification (App. 529).

The evidence also shows that the Alternative Plan is not one which "promises realistically to work, and promises realistically to work *now.*" *Green, supra,* 391 U.S. at 439. Pasadena's past experiments with "free choice" and "open enrollment" plans have not re-

sulted in desegregated schools (see note 10, *supra*). Plans of voluntary desegregation in the San Bernardino and Richmond, California school districts have failed, despite strenuous efforts by school officials to make minority neighborhood schools attractive to all students (a "magnet" effort), and despite the fact that those plans—like the petitioners' proposal—assured transportation for any student wishing to attend a school outside his or her neighborhood (App. 395–396, 549–557).

The Alternative Plan's "unique educational alternatives" concept—the only device purportedly designed to produce desegregation—is not a concrete proposal but merely a suggestion of the sorts of programs which could be instituted if parents were to express an interest in such programs. There is no assurance that the Plan's alleged catalysts of desegregation would be implemented at all,[46] let alone that they would in fact desegregate the schools.[47] In the last analysis the pro-

[46] Indeed, petitioners Myers, Newton, and Vetterli apparently oppose such innovations (see App. 283).

[47] The petitioners cite *Hart* v. *Community School Board*, 512 F. 2d 37 (C.A. 2), as an example of a case holding that "plans including specialized schools * * * with an opportunity for parental choice among them, are appropriate even where the plan is directed to the translation of a dual system into a unitary one" (Pet. Br. 22–23).

The establishment of a so-called "magnet school" was approved in *Hart* as part of a plan to desegregate that district's schools. However, the school board resolution relating to the establishment of the "magnet school" contained a provision that promised attainment of a specific quantum of desegregation (512 F. 2d at 42–43, n. 5), and the district court added a proviso to the plan which de-

(Continued)

posed Alternative Plan is nothing more than a proposal to return to schools mirroring the racial image of the surrounding area." But in a school system like this one, involving (among other things) the continuing effects of discriminatory siting and capacity decisions in school construction, desegregation "cannot be limited to the walk-in school." *Swann, supra,* 402 U.S. at 30.

In *Green, supra,* the Court said (391 U.S. at 438):

> [A] plan that at this late date fails to provide meaningful assurance of prompt and effective disestablishment of a dual system is * * * intolerable.

In *Monroe, supra,* 391 U.S. at 459, the Court reasserted the earlier holding of *Goss* v. *Board of Education,* 373 U.S. 683, 689, that

manded certain minimal levels of attendance at the school in that approximate ratio and ordered the development of a "back-up plan," based on zoning and transportation, which would be kept up-to-date and implemented in the event of failure of the magnet school plan. *Id.* at 43. The plan approved by the court of appeals in *Hart* was quite different from the plan rejected here. The court of appeals affirmed the remedy in *Hart* only because the district court "hedged the 'magnet school' plan * * * with conditions which, if not met on schedule, would require reversion to * * * the 'back-up plan'" (*id.* at 52) and the plan was "not free of coercive elements" (*id.* at 54). See also *Morgan* v. *Kerrigan, supra,* slip op. 34–39.

[48] The Plan's proposed part-time pairing of "sister schools" of "opposite ethnic make-up" is not an acceptable substitute for desegregation. See, *e.g.*, *Morgan* v. *Kerrigan, supra,* slip op. 12–13; *Keyes* v. *School District No. 1, Denver, Colorado,* 521 F. 2d 465, 477–479 (C.A. 10), certiorari denied, January 12, 1976, No. 75–701; *Arvizu* v. *Waco Independent School District,* 495 F. 2d 499 (C.A. 5), modified, 496 F. 2d 1309 (*per curiam*); *United States* v. *Texas Education Agency* (*Austin ISD*), 467 F. 2d 848, 858–859, 873 (C.A. 5) (*en banc*).

no official transfer plan or provision of which racial segregation is the inevitable consequence may stand under the Fourteenth Amendment.

In seeking relief beyond that already afforded them by the court of appeals in the present posture of this case,[49] petitioners seek no less than a retreat from these principles. They are asking this Court to declare that a school system with a history of unconstitutionally segregated schools may, after a brief court-ordered interlude without systemic violations of the Fourteenth Amendment, implement a plan of student enrollment that holds no promise of maintaining an effective remedy against the still-remaining segregatory effects of the board's discriminatory conduct. Such a declaration—permitting, in important respects, a return to the conditions that existed in Pasadena prior to 1970—would be inconsistent with a generation of decisions from *Brown* through *Swann*.

[49] As we understand the opinions below, there is little ultimate disagreement among the court of appeals judges concerning the governing legal principles; they differed, instead, principally in their interpretation of the grounds upon which the district court had acted. Judge Wallace, in dissent, expressed the view that the district court had failed "to consider whether the racial imbalance foreseeable upon dissolution of the injunction [or implementation of the Alternative Plan] is attributable to intentionaliy segregative actions of the school district" (Pet. App. A26). As we have explained in detail, we agree that under this Court's decisions, such a failure to distinguish for remedial purposes between *de facto* and *de jure* segregation would be error. In our view, however, the district court's findings and opinion, while not free from ambiguity in their use of terms (see pages 6, 34, *supra*), sufficiently show that its decision is properly based on its duty to remedy the effects of *de jure* segregation (see pages 6–10, *supra*).

While those decisions do not contemplate indefinite judicial regulatory supervision of school affairs or sanction judicial efforts designed to create racially balanced schools rather than to remedy constitutional violations, they do require the adoption of effective measures to eliminate the segregative effects of a school board's discriminatory conduct. Where, as here, the need for such measures remains to a substantial degree, it would be improper for a court to hold that the promise of *Brown* has been satisfied by the district's brief experience with a desegregated system.[50]

II

A DESEGREGATION CASE IN WHICH THE UNITED STATES IS A PLAINTIFF CANNOT BECOME MOOT

The private plaintiffs have now graduated from the Pasadena Schools. Petitioners contend (Pet. Br. 24–25) that this makes the case moot and (*id.* at 25) that "the presence of the United States is insufficient to preclude the dismissal of the action as moot." We disagree.

The United States intervened pursuant to Title IX of the Civil Rights Act of 1964, 42 U.S.C. 2000h–2. That section provides that "the United States shall be entitled to the same relief, as if it had instituted the action." The United States is not limited to the relief the private plaintiffs sought or even to the relief the

[50] Cf. Bell, *Waiting on the Promise of Brown*, 39 L. & Contemp. Prob. 341 (1975).

private plaintiffs could have sought. In this case the United States sought relief much more extensive than that requested by the private plaintiffs. The role of the United States has not been, as petitioners assert (Pet. Br. 25), "purely ancillary to that of the plaintiffs." The case was instituted as a class action suit to desegregate the district's high schools,[51] but our complaint in intervention "brought into the case the entire Pasadena Public School system." 415 F. 2d at 1243. It requested an injunction to prevent further unconstitutionally discriminatory practices and to require the school board to develop and implement a plan that would eliminate the effects of past discrimination. See 415 F. 2d at 1243.

Petitioners err in stating that the United States "asserted no right to relief except in terms of the plaintiffs' demands" (Pet. Br. 25) and that, if it had asserted a right to additional relief, it would be "precluded" (Pet. Br. 26) by statute from doing so. The United States did not commence this action pursuant to 20 U.S.C. (Supp. IV) 1706, which authorizes it to bring suit to vindicate the rights of particular individuals. It intervened pursuant to 42 U.S.C. 2000h–2, which authorizes the United States to assert claims in addition to the grievances of private parties. It did so here.

Nor are petitioners correct in stating (Pet. Br. 26) that "there is no authorization in Title IX for the United States to file such a suit except on behalf of wronged individuals who could not secure ade-

[51] August 28, 1968, Complaint at 1–2.

quate counsel in some other fashion." Title IX authorizes the intervention of the United States in actions "seeking relief from the denial of equal protection of the laws under the fourteenth amendment * * * *if the Attorney General certifies that the case is of general public importance*" (emphasis added).[52] This certification requirement ensures that the Attorney General will intervene only in cases significant enough to give the United States an interest separate from the interests of the private parties. The United States' interest in the present case therefore is its own.[53] That interest survives the graduation of the private plaintiffs.[54]

Even if the United States were not a party, it is far from certain that *Board of School Commissioners* v. *Jacobs*, 420 U.S. 128, would indicate that the case is moot. This case, unlike *Jacobs*, involves the continuing duty of a district court to supervise the progress

[52] 42 U.S.C. 2000h–2.

[53] Petitioners rely upon 42 U.S.C. 2000c–6 and 2000c(b), which, they assert (Pet. Br. 26), preclude the United States from bringing an action merely to achieve racial balance. As we demonstrated at pages 6–10, *supra*, however, the Pasadena schools became segregated because of discriminatory actions of the school board. The United States' complaint sought an injunction directing the school authorities to cease their discriminatory actions and to purge the school system of the effects of those actions. The United States has not sought racial balance for its own sake.

[54] See also *United States* v. *W. T. Grant Co.*, 345 U.S. 629, 633, which holds that cases brought by the United States are not moot even if the defendant voluntarily discontinues its illegal activity, so long as there is any reasonable expectation that a wrong will be repeated. Cf. Note, *The Mootness Doctrine in the Supreme Court*, 88 Harv. L. Rev. 373, 380–395 (1974).

of a school district that has begun the desegregation process pursuant to a court order entered at a time when the case was clearly not moot. The court has a duty to retain jurisdiction until that process has been completed. *Brown II, supra,* 349 U.S. at 301; *Green, supra,* 391 U.S. at 439; *Raney* v. *Board of Education, supra,* 391 U.S. 449; *Alexander* v. *Holmes County Board of Education, supra,* 396 U.S. at 21. A desegregation order, even when entered at the behest of private plaintiffs, vindicates not just private rights and the rights of students as a class but national policy as well. *Northcross* v. *Board of Education,* 412 U.S. 427, 428. Premature dismissal of the case on the ground that the nominal plaintiffs have graduated would defeat the vindication of that policy.[55]

[55] The case was brought as a class action. The district court's neglect so to certify it—entirely understandable in light of the intervention by the United States—does not make the case moot, because the continuing power of the court is derived from the nature of the wrong and the nature of the relief, not from the identity of the plaintiffs. In any event, any defect caused by failure to certify the class can be rectified by the addition of new plaintiffs similarly situated. See *Rogers* v. *Paul*, 382 U.S. 198, 199.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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FEBRUARY 1976.

APPENDIX

In more than 100 cases of which we are aware district courts have released school systems from detailed regulatory supervision and substituted general permanent injunctions. In other cases, apparently a substantial number, detailed supervision has been discontinued and the case transferred to the district court's inactive docket, but the original injunction has not been dissolved. For examples of the former category see the orders set out at App. 248–257 and see, *e.g.*, *Lee* v. *Macon County Board of Education,* N.D. Ala., Civil Action No. 70–251–S (ten school districts) (order filed February 19, 1975); *id.* (eight school districts) (order filed July 25, 1974); *id.* (seven school districts) (order filed July 11, 1974); *id.* (three school districts) (order filed July 3, 1974); *United States* v. *State of Georgia,* S.D. Ga., Civil Action No. 3009 (eighteen school districts) (order filed February 14, 1974); *id.*, M.D. Ga., Civil Action No. 2771 (thirty-five school districts) (consent order filed January 24, 1974); *Smith* v. *North Carolina State Board of Education* (*Goldsboro City*), E.D. N.C., Civil Action No. 2572 (order filed November 6, 1973); *United States* v. *Baker County School District* (*Pasco County*), M.D. Fla., Civil Action No. 70–298–CIV–T (order signed November 7, 1973).

At least two elements have combined in each of these cases before the district court has been willing to dissolve the regulatory injunction. First, there has been satisfactory compliance with the injunction for a term of years, during which the school district has (so far as it is possible) eliminated the continuing effects of segregation. Second, the school officials then in office

have demonstrated a willingness to cooperate in the future so that desegregation can be maintained without the need for intrusive judicial supervision. Often, it has appeared likely that the school officials would maintain attendance zones or patterns similar to those developed under under the court's supervision, so that the former racial identifiability of the schools would be unlikely to reassert itself.

The terminating order itself may contain a variety of provisions addressed to the needs and problems of particular school districts. Almost every terminating order contains a general permanent injunction against future racial discrimination in student or faculty assignments, school construction and placement, and the allowance of transfers to another school. Other orders also have contained provisions directing the school officials: (1) to continue assigning students in a manner consistent with the former regulatory injunction; (2) to allow any student who is a member of a race in the majority at his school to transfer to some school at which his race is in the minority, and to provide transportation for that purpose; or (3) not to allow more than a small proportion of the school district's children to attend public schools outside the district. At least one terminating order contains a provision automatically dissolving the general permanent injunction after seven additional years of compliance. For the convenience of the Court we have reprinted in this appendix the terminating orders in eight separate cases, involving 79 separate school systems. See also App. 248–257. We are also lodging with the Clerk of the Court copies of the memoranda for the United States setting out the position of the Department of Justice in several of those cases and balancing the factors that seemed to us to militate for and against termination of regulatory supervision.

In the United States District Court for the Northern District of Alabama, Southern Division

Civil Action No. 70–251–S

ANTHONY T. LEE, ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENORS, AND AMICUS CURIAE

NATIONAL EDUCATION ASSOCIATION, PLAINTIFF-INTERVENORS

v.

MACON COUNTY BOARD OF EDUCATION, ET AL., DEFENDANTS

ORDER

It having been shown to the satisfaction of this Court that certain defendant school systems have been operating a unitary school system for the past three years, and that all litigation pertaining to compliance with the orders of the Court have been satisfactorily resolved, this Court, deeming it proper so to do, hereby orders, adjudges and decrees that:

1. The detailed regulatory injunctions issued by this Court and by the United States District Court for the Middle District of Alabama as against the following school systems, the individual board members and the superintendents thereof, are dissolved

Carbon Hill City
Fayette County

Franklin County
Lamar County
Marion County
Muscle Shoals City
Russellville City
Tuscumbia City
Winston County
Winfield City

and the permanent injunction in paragraph 2, below substituted.

2. The above-named defendant school district, the individual board members and the superintendents thereof, are permanently enjoined from operating a dual system of racially identifiable schools. In addition, operation of the above-named defendant school districts shall be subject to the following provisions:

a. Defendants shall take no action which tends to segregate or otherwise discriminate against students or faculty by or within school on the basis of race, color, or national origin.

b. Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

c. Bus routes and the assignment of students to buses will be designed to ensure the transportation of all eligible pupils on a nonsegregated and otherwise nondiseriminatory basis.

d. All school construction, school consolidation and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the reoccurrence of the dual school structure.

e. If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if

it permits transfers into the district of students who live outside the district, it shall do so on a nondiscriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district.

3. The actions pertaining to the above-named districts are hereby placed on the inactive docket of this Court subject to being re-activated on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary.

The provisions of previous orders in this case as they relate to other defendants not named in paragraph 1, above, remain in full force and effect and are in no way affected by this order.

Done this 19th day of February, 1975.

J. Foy Guin, Jr.,
United States District Judge.

In the United States District Court for the Northern District of Alabama, Eastern Division

Civil Action No. 70-251-S

ANTHONY T. LEE, ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENORS AND AMICUS CURIAE

NATIONAL EDUCATION ASSOCIATION, PLAINTIFF-INTERVENORS

v.

MACON COUNTY BOARD OF EDUCATION ET AL., DEFENDANTS

ORDER

It having been shown to the satisfaction of this Court that certain defendant school systems have been operating a unitary school system for the past three years, and that all litigation pertaining to compliance with the orders of the Court have been satisfactorily resolved, this Court, deeming it proper so to do, hereby orders, adjudges and decrees that:

1. The detailed regulatory injunctions issued by this Court and by the United States Court for the Middle District of Alabama as against the following school systems, the individual board members and the superintendents thereof, are dissolved

Attalla City
Cherokee County
DeKalb County

Etowah County
Ft. Payne City
Guntersville City
Marshall County
St. Clair County

and the permanent injunction in paragraph 2, below, substituted.

2. The above-named defendant school district, the individual board members and the superintendents thereof, are permanently enjoined from operating a dual system of racially identifiable schools. In addition, operation of the above-named defendant school districts shall be subject to the following provisions:

a. Defendants shall take no action which tends to segregate or otherwise discriminate against students or faculty by or within school on the basis of race, color or national origin.

b. Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

c. Bus routes and the assignment of students to buses will be designed to ensure the transportation of all eligible pupils on a nonsegregated and otherwise nondiscriminatory basis.

d. All school construction, school consolidation and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the reoccurrence of the dual school structure.

e. If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district of students who live outside the district, it shall do so on a nondiscriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district.

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3. The actions pertaining to the above-named districts are hereby placed on the inactive docket of this Court subject to being re-activated on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary.

The provisions of previous orders in this case as they relate to other defendants not named in paragraph 1, above, remain in full force and effect and are in no way affected by this order.

Done this 25th day of July, 1974.

SAM C. POINTER,
United States District Judge.

In the United States District Court for the Northern District of Alabama, Southern Division

Civil Action No. 70-251-S

ANTHONY T. LEE, ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENORS AND AMICUS CURIAE

NATIONAL EDUCATION ASSOCIATION, PLAINTIFF-INTERVENORS

v.

MACON COUNTY BOARD OF EDUCATION ET AL., DEFENDANTS

ORDER

It having been shown to the satisfaction of this Court that certain defendant school systems have been operating a unitary school system for the past three years, and that all litigation pertaining to compliance with the orders of the Court have been satisfactorily resolved, this Court, deeming it proper so to do, hereby orders, adjudges and decrees that:

1. The detailed regulatory injunctions issued by this Court and by the United States District Court for the Middle District of Alabama as against the following school systems, the individual board members and the superintendents thereof, are dissolved

Clay County
Cullman County

Cullman City
Jacksonville City
Morgan County
Scottsboro City
Sylacauga City

and the permanent injunction in paragraph 2, below, substituted.

2. The above-named defendant school district, the individual board members and the superintendents thereof, are permanently enjoined from operating a dual system of racially identifiable schools. In addition, operation of the above-named defendant school districts shall be subject to the following provisions:

a. Defendants shall take no action which tends to segregate or otherwise discriminate against students or faculty by or within school on the basis of race, color, or national origin.

b. Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

c. Bus routes and the assignment of students to buses will be designed to ensure the transportation of all eligible pupils on a nonsegregated and otherwise nondiscriminatory basis.

d. All school construction, school consolidation and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the reoccurrence of the dual school structure.

e. If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district of students who live outside the district, it shall do so on a non-discrimatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district.

3. The actions pertaining to the above-named districts are hereby placed on the inactive docket of this Court subject to being re-activated on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary.

The provisions of previous orders in this case as they relate to other defendants not named in paragraph 1, above, remain in full force and effect and are in no way affected by this order.

Done this 11th day of July, 1974.

JAMES H. HANCOCH,
United States District Judge.

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In the United States District Court for the Northern District of Alabama, Eastern Division

Civil Action No. 70-251-S

ANTHONY T. LEE, ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENORS AND AMICUS CURIAE

NATIONAL EDUCATION ASSOCIATION, PLAINTIFF-INTERVENORS

v.

MACON COUNTY BOARD OF EDUCATION ET AL., DEFENDANTS

ORDER

It having been shown to the satisfaction of this Court that certain defendant school systems have been operating a unitary school system for the past three years, and that all litigation pertaining to compliance with the orders of the Court have been satisfactorily resolved, this Court, deeming it proper so to do, hereby orders, adjudges and decrees that:

1. The detailed regulatory injunctions issued by this Court and by the United States District Court for the Middle District of Alabama as against the following school systems, the individual board members and the superintendents thereof, are dissolved and

Blount County
Oneonta City
Mountain Brook City

the permanent injunction in paragraph 2, below, substituted

2. The above-named defendant school district, the individual board members and the superintendents thereof, are permanently enjoined from operating a dual system of racially identifiable schools. In addition, operation of the above-named defendant school districts shall be subject to the following provisions:

a. Defendants shall take no action which tends to segregate or otherwise discriminate against students or faculty by or within school on the basis of race, color, or national origin.

b. Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

c. Bus routes and the assignment of students to buses will be designed to ensure transportation of all eligible pupils on a nonsegregated and otherwise nondiscriminatory basis.

d. All school construction, school consolidation and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the reoccurrence of the dual school structure.

e. If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district of students who live outside the district, it shall do so on a nondiscriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district.

3. The actions pertaining to the above-named districts are hereby placed on the inactive docket of this

Court subject to being re-activated on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary.

The provisions of previous orders in this case as they relate to other defendants not named in paragraph 1, above, remain in full force and effect and are in no way affected by this order.

Done this 3rd day of July, 1974.

FRANK H. MCFADDEN,
United States District Judge.

In the United States District Court for the Southern District of Georgia, Savannah Division

Civil Action No. 3009

UNITED STATES OF AMERICA, PLAINTIFF

CHARLIE RIDLEY, ET AL., PLAINTIFF-INTERVENOR

v.

STATE OF GEORGIA, ET AL., DEFENDANTS

CONSENT ORDER

This case was originally filed by the United States on August 1, 1969, in the United States District Court for the Northern District of Georgia against the State of Georgia and various school agencies and officials of the state. *United States* v. *State of Georgia, et al.*, C.A. No. 12,972 (N.D. Ga.). That Court entered a number of orders for the purpose of effecting desegregation of the public schools of 81 school districts [1] located throughout the State of Georgia, and on September 5, 1972 in compliance with the directions of the United States Court of Appeals for the Fifth Circuit, the Court issued an order which, *inter alia* added as parties defendants each individual school district and transferred to this Court's jurisdiction the 21 school districts involved in these proceedings.

[1] The 18 original school districts in the case were reduced to 79 by the consolidation of two city districts with their respective county counterparts.

On December 27, 1973, the State defendants moved this Court to dismiss the State of Georgia, the State Board of Education and the State Superintendent of Schools as parties defendant, or, in the alternative, to "enter and order—similar to an order entered in the Northern District on June 23, 1973, placing on an inactive docket those local county and city school systems within the Southern Judicial District which by virture of compliance with all court orders have achieved and maintained a 'unitary status'—" The State defendants, the intervenors and the United States have agreed that the alternative relief requested by the state would appropriately dispose of the motion.

On the basis of the record in this case, the Court has determined that the Appling County School District, the Atkinson County School District, the Bryan County School District, the Camden County School District, the Candler County School District, the Charleton County School District, the Jefferson Davis County School District, the Jenkins County School District, the McDuffie County School District, the McIntoch County School District, the Montgomery County School District, the Tatnall County School District, the Toombs County School District, the Treutlen County School District, the Vaidalia City School District, the Warren County School District, the Wayne County School District and the Wilkes County School District have for three years assigned students to the public schools in accordance with the plans approved by the Northern District and have become "unitary" in the sense required by the Supreme Court's decisions in *Green* v. *County School Board,* 391 U.S. 430 (1968) and *Swann* v. *Board of Education,* 402 U.S. 1 (1971).

The bi-annual reports submitted by Columbia County School District and the Jefferson County School District in October, 1973, indicate that for certain schools in the systems the ratio of faculty assigned to those schools on a full-time basis deviates by more than two positions from the system-wide faculty quotient.

On February 22, 1972, the Dublin School System's desegregation plan was substantially modified in order to bring the system into compliance with the standing orders of the Court regarding student assignment. This plan was not implemented until the 1972–73 school year.

The parties to this consent order agree that the above findings accurately represent the present status of the indicated school districts as shown by the record in this case and the bi-annual reports filed by the school districts. As indicated by the signatures of counsel below, the parties have also agreed on the form of this decree, and the Court being of the opinion that the entry of this decree will effectuate federal law, now therefore:

It is ordered, adjudged, and decreed, that:

1. The detailed regulatory injunction issued by the United States District Court for the Northern District of Georgia on December 17, 1969, as subsequently modified, is dissolved for the Appling County School District, the Atkinson County School District, the Bryan County School District, the Camden County School District, the Candler County School District, the Charleton County School District, the Jefferson Davis County School District, the Jenkins County School District, the McDuffie County School District, the McIntosh County School District, the Montgomery County School District, the Tatnall County School

District, the Toombs County School District, the Treutlen County School District, the Vidalia City School District, the Warren County School District, the Wayne County School District and the Wilkes County School District and the following permanent injunction substituted for each school district:

(a) The school district shall take no action which tends to segregate students or faculty by or within schools on the basis of race, color, or national origin.

(b) Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

(c) Each school district shall permit a student attending a school in which his race is in the majority to choose to attend another school where his race is in the minority. Any student transferring under this arrangement must be provided with free transportation and space must be made available in the school to which the student desires to move.

(d) Bus routes and the assignment of students to buses will be designed to insure the transportation of all eligible pupils on a non-segregated and otherwise nondiscriminatory basis.

(e) All school construction, school consolidation and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the reoccurrence of the dual school structure.

(f) If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district, it shall do so on a nondiscriminatory

basis, except that it shall not consent to tranfers where the cumulative effect will reduce desegregation in either district.

2. Each of the school districts listed in paragraph 1 above shall be placed on this Court's inactive docket, subject to being reactivated on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary.

3. The State of Georgia, the State Board of Education, its individual members, and the State Superintendent of Schools have a continuing duty to promote compliance by the school districts in this cause with orders of this Court and shall remain as active parties to this case until all of the school districts in this cause have been placed on the inactive docket.

4. The July 16, 1971, Order in this case provides:

> "The ratio of faculty and staff assigned . . . [each] facility on a full-time basis [must be] . . . substantially the same as the faculty quotient; system-wide personnel are to be counted in such ratio proportionately to the number of schools served; 'substantially' means as near to exact as possible and in no event to exceed over 2 positions from exact."

Since the bi-annual reports of the Columbia County School District and the Jefferson County School District show that these districts have schools, the faculties of which exceed two positions from the exact system-wide faculty ratio, they will remain on the active docket of this Court. Further special orders will subsequently issue to the school officials of the two districts concerning this matter.

5. Since the Dublin City School System's plan for desegregation has not been in effect for a three year period due to its modification in February, 1972, the

Dublin City School System will remain on the active docket of this Court.

6. The State of Georgia, the State Board of Education, its individual members, the State Superintendent of Schools, the school districts which remain active parties in this cause as indicated in paragraphs 4 and 5 of this Order shall continue to comply with all of the requirements of the December 17, 1969 Order of the United States District Court for the Northern District of Georgia, as subsequently, modified, with the following exceptions:

(a) School districts remaining as active parties in this cause, in lieu of providing the information required by the December 17, 1969 Order, as subsequently modified, in their bi-annual reports may provide the information reported in the School System Summary Reports (Forms 101 & 102) which are filed with the Department of Health, Education and Welfare and the information reported in the Elementary-Secondary Staff Information (Form EEO–5) which is filed with the Equal Employment Opportunity Commission. However, all school districts which remain as active parties in this cause shall continue to file bi-annual reports to the State Board of Education and the Department of Health, Education and Welfare.

(b) The provisions of the detailed regulatory injunction of December 17, 1969, issued by the United States District Court for the Northern District of Georgia, as subsequently modified, specifying the duties of the State defendants in this cause, shall automatically be dissolved as they pertain to each school district which this Court has placed on the inactive docket and the following permanent injunction substituted:

The State of Georgia; the State Board of Education, its individual members and the State Superintendent of Schools (a) shall not take any action which may result in the re-establishment of the former dual school system in any of said school districts; (b) shall not permit any action by any of said school districts which would violate the terms of the permanent injunction provided for in paragraph 4 of this order; (c) shall not provide any state funds to any of said school districts which has been found in violation of the terms of the permanent injunction provided for in paragraph 4 of this order; and (d) shall make appropriate inquiries whenever the State Department of Education receives information or complaints reflecting possible violation by any of said school districts of the terms of the permanent injunction provided for in paragraph 4 of this order.

8. The Clerk is directed to send a copy of this Order to all attorneys who have entered an appearance on behalf of any of the individual school districts named herein, and in the event that no attorney has appeared on behalf of an individual school district, a copy of this Order shall be mailed to the school superintendent of that district. Any individual school district that objects to any of the provisions of this Order must file notice of the objection with this Court within ten (10) days from the date of this Order, which shall become final and conclusive as to each school district which does not object within that time. If objections are filed, a hearing will be set on the objections at a subsequent date.

Done this 14th day of February, 1974.

ALEXANDER J. LAWRENCE,
United States District Judge.

Approved as to form:
KAYDELL O. WRIGHT,
Counsel for Plaintiff.
ALFRED L. EVANS, Jr.,
Counsel for Defendants.
ELIZABETH R. RINDSKOPF, Jr.,
Counsel for Plaintiff-Intervenor.

In the United States District Court for the
Middle District of Georgia, Macon Division

Civil Action No. 2771

UNITED STATES OF AMERICA, PLAINTIFF

CHARLIE RIDLEY, ET AL., PLAINTIFF-INTERVENOR

v.

STATE OF GEORGIA, ET AL., DEFENDANTS

CONSENT ORDER

This case was originally filed by the United States on August 1, 1969, in the United States District Court for the Northern District of Georgia against the State of Georgia and various school agencies and officials of the state. *United States* v. *State of Georgia, et al.*, C.A. No. 12,972 (N.D. Ga.). That Court entered a number of orders for the purpose of effecting desegregation of the public schools of 81 school districts[1] located throughout the State of Georgia, and on September 5, 1972, in compliance with the directions of the United States Court of Appeals for the Fifth Circuit, that Court issued an order which, *inter alia* added as parties defendants each individual school district and transferred to this Court's jurisdiction the 47 school districts involved in these proceedings.

[1] The 81 original school districts in the case were reduced to 79 by the consolidation of two city districts with their respective county counterparts.

On December 27, 1973, the State defendants moved this Court to dismiss the State of Georgia, the State Board of Education and State Superintendent of Schools as parties defendant, or, in the alternative, to "enter an order . . . similar to an order entered by the Northern District on June 23, 1973, placing on an inactive docket those local county and city school systems within the Middle Judicial District which by virtue of compliance with all court orders have achieved and maintained a 'unitary status'. . . ." The State defendants, the intervenors, and the United States have agreed that the alternative relief requested by the state would appropriately dispose of the motion.

On the basis of the record in this case, this Court has determined (1) the Bleckley County School District, the Butts County School District, the Calhoun County School District, the Chattachoochee County School District, the Clay County School District, the Cochran City School District, the Cook County School District, the Crawford County School District, the Dooly County School District, the Grady County School District, the Hancock County School District, the Harris County School District, the Hart County School District, the Hawkinsville City and Pulaski County School District, the Jasper County School District, the Jones County School District, the Lee County School District, the Macon County School District, the Marion County School District, the Miller County School District, the Monroe County School District, the Morgan School District, the Peach County School District, the Pelham City School District, the Putnam School District, the Quitman School District, the Randolph County School District, the Schley County School District, the Terrell County

School District, the Turner County School District, and the Wilcox County School District have for three years assigned students to the public schools in accordance with the plans approved by the Northern District and have become "unitary" in the sense required by the Supreme Court's decisions in *Green* v. *County School Board,* 391 U.S. 430 (1968) and *Swann* v. *Board of Education,* 402 U.S. 1 (1971).

(2) The following school systems have made the indicated modifications in the original desegregation plans which have not previously received court approval:

a. The Echols County School District has designated grades 1–3 within the Echols County Elementary and High School as the Echols County Primary School.

b. The Irwin County School District has added the Irwin County Middle School, serving grades 4–6, and the creation of the Middle School has resulted in alteration of grade structure at Irwin County Elementary, formerly serving grades K–4 and now serving K–3, and at the Irwin County Junior High, formerly serving grades 5–8, and now serving grades 7–8.

c. The Mitchell County School District altered its grade structures by combining Mitchell County Primary and Mitchell County Middle, formerly serving grades 6–9, now serving grades 6–8; Sumner Elementary School serving grades 1–6 and by combining Mitchell County Junior High and Mitchell County Senior High, formerly serving grades 7–9 and 10–12, into the Mitchell County High School serving grades 7–12.

d. The Worth County School District rearranged grade structures in Holley Jr. High, formerly serving grades 6–9, now serving grades 6–8; Sumner Elementary, formerly serving grades 5–9, now serves grades

5–8; Ossie Wheary, formerly serving grades 1–8, now serves grades K and 5; and Worth County High, formerly serving grades 10–12, now serves grades 9–12.

None of the above modifications have adversely effected desegregation of the public schools in the respective school districts and they have become "unitary" in the sense required by *Green, supra,* and *Swann, supra.*

The Court further determines that the bi-annual reports filed on October 10, 1973, by the following school districts show student transfers being made from, or being received by, the school system as indicated:

a. Brooks County. This district has reported 6% (68 white students) of its minority white enrollment transferring to Thomas County. Brooks County has a student racial enrollment of 65% black and 35% white (1949 black, 1067 white), whereas Thomas County has a student racial enrollment of 58% black and 42% white (3318 black, 2371 white). Brooks County District reports an additional 10% of its minority enrollment (119 white students) transferring to Lowndes County which has a 75% white student enrollment.

b. Early County. This district has reported 7% (80 white students) of its minority white enrollment transferring to Seminole County. Early County has a 38% white student enrollment (1731 black, 1039 white) whereas Seminole County has a student racial enrollment of 44% black and 56% white.

c. Sumter County. This district has reported 18% (138 white students) of its minority white enrollment transferring to Americus City School District. Sumter County has a student racial enrollment of

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72% black and 28% white (1604 black, 609 white) whereas Americus City has a student racial enrollment of 54% black and 46% white (194 [*sic*] black, 1259 white).

d. Twiggs County. This district has reported 14% (65 white students) of its minority white enrollment transferring to Wilkinson County. Twiggs has a 21% white student enollment (1504 black, 403 white) whereas Wilkinson County has a student racial enrollment of 57% black and 43% white.

The record also shows that the Lamar County School system continues to assign students to public schools under a plan which provides for sex segregation, and no hearing has yet been held where the school officials could demonstrate that the plan is based on educational rather than racial reasons. In addition, the record shows the following active litigation pending with respect to the indicated school districts: (a) the Baker County School District was the subject of a motion for supplemental relief, concerning the sale of a formerly public school for the use of a private segregated school, which was resolved by an order of this Court dated January 4, 1974, and though the time for filing appeal has not run, the Court believes the Baker County School District can also be placed on the inactive docket because the January 4, 1974, order does not relate to student assignment. This action by the Court in no way will affect the January 4, 1974, order which will remain in full force and effect, but the detailed regulatory injunction concerning student assignment against the Baker County School District is dissolved and the permanent injunction outlined in paragraph 2 below, subparagraphs a through f, is substituted therefor; (b) the Elbert County School District is the subject of a pending motion to modify

the desegregation plan presently in effect; (c) the Taylor County School District is the subject of a pending motion to eliminate sex segregation in its schools; (d) the Wilkinson County School District is the subject of a pending motion concerning alleged aid to a private segregated school.

The parties to this consent order agree that the above findings accurately represent the present status of the indicated school districts as shown by the record in this case and the bi-annual reports filed by the school districts. As indicated by the signatures of counsel below, the parties have also agreed on the form of this decree and the Court being of the opinion that the entry of this decree will effectuate federal law, now therefore: it is ordered, adjudged and decreed that

1. The modifications in the desegregation plans for the Worth County School District, Mitchell County School District, Irwin County School District and Echols County School District described above are approved.

2. The detailed regulatory injunction issued by the United States District Court for the Northern District of Georgia on December 17, 1969, as subsequently modified, is dissolved for the Bleckley County School District, the Butts County School District, the Calhoun County School District, the Chattahoochee County School District, the Clay County School District, the Cochran City School District, the Cook County School District, the Crawford County School District, the Dooly County School District, the Echols County School District, the Grady County School District, the Hancock County School District, the Harris County School District, the Hart County School District, the Hawkinsville City and Pulaski County School District, the Irwin County School District, the Jasper County School District, the Jones County School District, the Lee County School District, the Macon County School District, the Marion County School District, the Miller County School District, the Mitchell County School District, the Monroe County School District, the Morgan School District, the Peach County School District, the Pelham City School District, the Putnam School District, the Quitman School District, the Randolph County School District, the Schley County School District, the Terrell County School District, the Turner County School District, the Wilcox County School District, and the Worth County School District and the following permanent injunction is substituted for each school district:

(a) The school district shall take no action which tends to segregate students or faculty by or within schools on the basis of race, color, or national origin.

(b) Staff members who work directly with children and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

(c) Each school district shall permit a student attending a school in which his race is in the majority to choose to attend another school where his race is in the minority. Any student transferring under this arrangement must be provided with free transportation and space must be made available in the school to which the student desires to move.

(d) Bus routes and the assignment of students to buses will be designed to insure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis.

(e) All school construction, school consolidation and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the reoccurrence of the dual school structure.

(f) If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district, it shall do so on a non-discriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district.

3. Each of the school districts listed in paragraph 2 above shall be placed on this Court's inactive docket, subject to being reactivated on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary.

4. The State of Georgia, the State Board of Education, its individual members, and the State Superintendant of Schools have a continuing duty to promote compliance by the school districts in this cause with orders of this Court and shall remain as active parties to this case until all of the school districts in this cause have been placed on the inactive docket.

5. The July 16, 1971, order in this case provides:

> "[I]n no event, shall more than 5% of the minority students be allowed to transfer to other districts where they are either in the majority or made a larger part of a minority percentage than in the district from which they have transferred. . ."

Since the bi-annual reports of the Brooks County School District, the Thomas County School District, the Early County School District, the Seminole County School District, the Sumter County School District,

the Americus City School District, the Twiggs County School District, and the Wilkinson County School District show that those districts are either sending or receiving nonresident students in excess of five (5) per cent of the minority students of the sending school district under circumstances where the transferring students are either in the majority or made a larger part of a minority percentage than in the district from which they have transferred, they will remain on the active docket of this Court. Further special orders will subsequently issue to the school officials of those districts concerning the issues raised by the student transfers shown on the bi-annual reports.

6. Those school districts which are the subjects of pending motions—the Elbert County School District, the Taylor County School District, and the Wilkinson County School District—and the Lamar County School District, which continues to assign students to school on the basis of sex segregation, shall remain on the active docket of this Court.

7. The State of Georgia, the State Board of Education, its individual members, the State Superintendent of Schools the school districts which remain as active parties in this cause as indicated in paragraphs 5 and 6 of this Order shall continue to comply with all of the requirements of December 17, 1969, Order of the United States District Court for the Northern District of Georgia, as subsequently modified with the following exceptions:

(a) School districts remaining as active parties in this cause, in lieu of providing the information required by the December 17, 1969 Order, as subsequently modified, in their bi-annual reports may provide the information reported in the School System Summary Reports (Forms 101 and 102) which

are filed with the Department of Health, Education, and Welfare and the information reported in the Elementary-Secondary Staff Information (Form EEO–5) which is filed with the Equal Employment Opportunity Commission. However, all school districts which remain as active parties in this cause shall continue to file bi-annual reports to the State Board of Education and the Department of Health, Education, and Welfare.

(b) The provisions of the detailed regulatory injunction of December 17, 1969, issued by the United States District Court for the Northern District of Georgia, as subsequently modified, specifying the duties of the State defendants in this cause, shall automatically be dissolved as they pertain to each school district which this Court has placed on the inactive docket and the following permanent injunction substituted:

> The State of Georgia; the State Board of Education, its individual members and the State Superintendent of Schools (a) shall not take any action which may result in the reestablishment of the former dual school system in any of said school districts; (b) shall not permit any action by any of said school districts which would violate the terms of the permanent injunction provided for in paragraph 4 of this order; (c) shall not provide any state funds to any of said school districts which has been found in violation of the terms of the permanent injunction provided for in paragraph 4 of this order; and (d) shall make appropriate inquiries whenever the State Department of Education receives information or complaints reflecting possible violation by any of said school districts of the terms of the permanent injunction provided for in paragraph 4 of this order.

8. The Clerk is directed to send a copy of this Order to all attorneys who have entered an appearance on behalf of any of the individual school districts named herein, and in the event that no attorney has appeared on behalf of an individual school district, a copy of this Order shall be mailed to the school superintendent of that district. Any individual school district that objects to any of the provisions of this Order must file notice of the objection with this Court within ten (10) days from the date of this Order, which shall become final and conclusive as to each school district which does not object within that time. If objections are filed, a hearing will be set on the objections at a subsequent date.

Done this 24th day of January, 1974.

WILBUR D. OWENS, JR.,
United States District Judge.

Approved as to form:

J. GERALD HEBERT,
Counsel for Plaintiff.

ALFRED L. EVANS, JR.,
Counsel for Defendants.

ELIZABETH R. RINDSKOPF,
Counsel for Plaintiff-Intervenor.

In the United States District Court for the Eastern District of North Carolina, Raleigh Division

Civil Action No. 2572

EVERETT DECARL SMITH, JR., ET AL., PLAINTIFFS
AND
UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

v.

NORTH CAROLINA STATE BOARD OF EDUCATION, GOLDSBORO CITY BOARD OF EDUCATION, ET AL., DEFENDANTS

ORDER

This cause was heard before his Honor, F. T. Dupree, Jr., District Judge, upon motion of the defendant, Goldsboro City Board of Education, (hereinafter sometimes called Goldsboro) to dismiss this action as it relates to such defendant. The original plaintiffs, plaintiff-intervenor and Goldsboro, were all represented by counsel upon oral argument. Plaintiff-intervenor and Goldsboro filed legal memoranda with the Court. The following facts are established by the record:

1. The defendant Goldsboro was made a party to this proceeding on September 18, 1970, upon motion of Plaintiff-intervenor, the United States of America.

2. Thereafter, in October, 1970, Goldsboro filed an answer to the complaints of the private plaintiffs and plaintiff-intervenor, and at the same time filed with the Court its plan of organization and desegregation adopted and implemented for the school year 1970–71.

3. The only exception or objection taken to the Goldsboro 1970–71 desegregation plan by private plaintiffs and plaintiff-intervenor was to the existence of one all black elementary school located in the Western part of Goldsboro in the center of an all black residential area known as the School Street School.

4. On April 7, 1971, Goldsboro formally adopted a modified school desegregation plan to be implemented during the school year 1971–72. This modified plan eliminated the one all black school which remained in the system.

5. The Goldsboro plan for 1971–72 is set forth in a consent decree filed in this proceeding on May 18, 1971. One of the recitals contained in the order of May 18, 1971, reads as follows:

> "The plan adopted by the defendant Goldsboro City Board of Education for the school year 1971–72 (Appendix A) has been examined by counsel for the private plaintiffs and plaintiff-intervenor and all parties are in agreement that said plan as adopted by the defendant Goldsboro City Board of Education meets the requirements imposed upon [Goldsboro] by the law of the land."

6. Before signing the consent order this Court also examined said plan and concluded that the plan, when implemented, would establish a unitary school system within the district administered by Goldsboro.

7. The plan described in the court order was implemented by Goldsboro for the school year 1971–72 and has been followed for the succeeding school years of 1972–73 and 1973–74.

8. In faithful compliance with the order, Goldsboro has filed each school year, on or before October 15, a

report to the Court containing the information, statistics, and other data required under the reporting provisions of Appendix B of the order. These reports demonstrate, and the Court so finds, that Goldsboro has fully implemented the 1971–72 plan and has otherwise complied with the order of May 18, 1971. Indeed, there has been no complaint of non-compliance filed by any party to this proceeding. Counsel for plaintiff-intervenor concedes in oral argument that Goldsboro is in compliance.

9. There is nothing before the Court to indicate that Goldsboro, or any other agency of the State, has attempted to fix or alter demographic patterns so as to affect the racial composition of any of the schools within the system. Furthermore, there is nothing in the record to indicate or suggest Goldsboro will not continue to act in good faith and to operate a unitary school system.

10. The Court has been informed that the defendant, Jerry D. Paschall, is no longer serving as Superintendent of the Goldsboro City Schools.

Based on the foregoing findings and entire record the Court concludes it has retained jurisdiction over Goldsboro for a reasonable and sufficient period of time to insure that the school system has been operated in compliance with its previously entered order, and in the exercise of its broad discretionary authority, the Court is of the opinion that there is no need or justification for it to continue to exercise a supervisory role and for these reasons the motion to dismiss ought to be granted;

Now therefore, it is ordered, adjudged and decreed:

1. That the defendant, Goldsboro City Board of Education, continue to operate a unitary school system

in substantial compliance with its plan of desegregation previously approved by the Court on May 18, 1971, and with the Constitution of the United States;

2. That this action be and the same is hereby dismissed, without prejudice, as it relates to the defendant Goldsboro City Board of Education and the defendant Jerry D. Paschall, former Superintendent. See Harper, et als., —— F. 2d ———— (No. 73–1853, Fourth Circuit, October 15, 1973).

This the 6th day of November, 1973.

F. T. DUPREE, Jr.,
U.S. District Judge.

In the United States District Court for the Middle District of Florida, Tampa Division

Civil Action No. 70-298-CIV-T
(Pasco County School District)

UNITED STATES OF AMERICA, PLAINTIFF

v.

BAKER COUNTY SCHOOL DISTRICT, ET AL., DEFENDANTS

ORDER

The parties, by and through their counsel, having agreed to entry of the following order, it is hereby ordered, adjudged and decreed:

1. The detailed regulatory injunction issued by this Court on August 5, 1970, is dissolved.

2. The defendant school district is permanently enjoined from operating a dual system of racially identifiable schools. In addition, operation of the defendant school district shall be subject to the following provisions:

a. Defendants shall take no action which tends to segregate students or faculty by or within schools on the basis of race, color, or national origin.

b. Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, and national origin.

c. The school district shall permit a student attending a school in which his race is in the

majority to choose to attend another school, where his race is in the minority. Any student transferring under this arrangement must be provided with free transportation and space must be made available in the school to which he desires to move.

d. Bus routes and the assignment of students to buses will be designed to insure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis.

e. All school construction, school consolidation, and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the reoccurrence of the dual school structure.

f. If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district of students who live outside the district, it shall do so on a non-discriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district.

3. This action is hereby closed as an active case of this Court subject to being reopened on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary.

Done this 7th day of November, 1973.

WM. TERRELL HODGES,
United States District Judge.

Approved as to form and content:

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75–164

PASADENA CITY BOARD OF EDUCATION, et al.,
Petitioners,

vs.

NANCY ANNE SPANGLER, et al.,
Respondents,

and

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF RESPONDENTS SPANGLER, ET AL.

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IN THE

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OCTOBER TERM, 1975

No. 75–164

PASADENA CITY BOARD OF EDUCATION, et al.,
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and

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF OF RESPONDENTS SPANGLER, ET AL.

OPINIONS BELOW

In addition to the opinions cited by petitioners, other opinions involving this case are reported at 415 F.2d 1242, 427 F. 2d 1352, and 384 F.Supp. 846.

QUESTIONS

Respondents are not satisfied with petitioners' formulation of the questions presented for review and therefore, pursuant to Rule 40(3) of this Court, present the following:

1. Where a decree holding that a school board is guilty of de jure segregation has become final, and a portion of the decree required the board to remedy the discrimination by not allowing more than a certain percentage of a minority in any school, may the Board later on certiorari attack the validity of the decree?

2. Where a school district found to have been guilty of de jure segregation has failed to become unitary, and where it is capable of complying with the Court's decree, may the trial court require the district to become unitary before it relieves the district of judicial control or of that portion of its remedial decree not allowing more than a certain percentage of a minority in any school in the district?

3. Does a trial court abuse its duty

under Brown II, or otherwise abuse its discretion, when it refuses to allow a de jure segregated school district which has not become unitary to adopt a plan which will place the district in the same or virtually the same segregatory position it was in when the litigation was started which led to the decree requiring the board to desegregate?

STATEMENT

With due respect, petitioners argue a case which is simply not before this Court. This is a de jure segregation case. Petitioners have not made the district unitary; until they do, the Constitution does not permit them to either go it alone or be relieved of the decree, good faith compliance with which holds promise for making the district unitary.

On January 23, 1970, the district court entered its judgment (Appx. 3-4)[1]

[1] "Appx." refers to the Single Appendix filed herein pursuant to this Court's Rule 26.

enjoining the members of the board "from discriminating on the basis of race in the operation of the Pasadena Unified School District" (Appx. 3) and requiring them to adopt a plan that "shall include programs for the assignment, hiring, and promotion of teachers and other professional staff members in such a manner as to reduce racial segregation throughout the District. The plan shall include procedures to be followed and goals to be attained in connection with the location and construction of facilities, both permanent and transportable, that will reduce racial segregation in the District. The plan shall provide for student assignments in such a manner that, by or before the beginning of the school year that commences in September of 1970 there shall be no school in the District, elementary or junior high or senior high school, with a majority of any minority students."

This order was made pursuant to findings of fact pointing unerringly to the segregated school system fostered and maintained by the Board. *E.g.*:

In the assignment of students the Board assigned white students living in the proximity of black schools, Cleveland and Lincoln, to a "white" school, Linda Vista (Appx. 100-01); when this latter school was closed for repairs, the school district transported Linda Vista children three miles across the Colorado Freeway to another "white" school although five majority "black" schools were closer to Linda Vista, three of them having more unused capacity than San Rafael (Appx. 101); the students from Linda Vista were assigned to attend three "white" junior high schools but never the nearest junior high, Washington, which was "black"; in addition, Washington has had more black students than the four other regular junior high schools in any year for which records are in evidence (Appx. 101); in the attendance zones drawn between the District's two largest elementary schools, the Board assigned those living in a white residential area, most of which was close to the "black" Washington School, to the 97% white Longfellow School, and then to the 99.9% white Altadena School although Altadena

was overenrolled and Washington was underenrolled (Appx. 103); ten years later, to relieve overcrowding at Longfellow which by then had become 88% white, the Board assigned the students to Webster and Burbank, both of which were over 97% white, Webster itself being overenrolled (*ibid.*); and the Board relieved the then overcrowding at Washington not by assigning the students to Altadena, but by adding still another, an *eighth*, transportable (*ibid.*); neither "white" Altadena nor Longfellow had transportables that year (*ibid.*).

In the high schools, the Board manipulated attendance so as to increase the number of white students in the "white" schools and the number of black students in the "black" schools (Appx. 105).

Although the Board and the District's chief administrative officers recognized the need for integration of the District's schools since at least 1958, they took no steps toward that end beyond adopting an "open enrollment" or "free choice" plan

which permitted a small number of both black and white students to escape black schools (Appx. 106).

And the Board consistently voted against proposals which would have led to integration (Appx. 106-7) although it knew that under California law it had the duty to do so (Appx. 107). In the matter of dis tricting, the Board assured that the two "white" high schools would have no more than 24% black students but placed no limitation on the "black" high schools (Appx. 108); at the junior high level, the Board made attendance zone changes so that four of them, the "white" junior highs, would have an enrollment of no more than 30% black, but took no such steps with regard to the "black" junior high (Appx. 108-9); and at the elementary level the Board adopted a program to insure that schools with less than 30% black enrollment would continue to have predominantly white enrollment (Appx. 109).

The Board used transportation to make it possible for white children to avoid attending schools with a greater percentage

of black students (Appx. 109).

All this resulted in 85% of the District's black elementary students attending eight majority black schools, while 93% of its white elementary students attended the other 21 schools (Appx. 99); in some schools having as much as 80 or 90% black students, with one, Cleveland Elementary, having seven white students in an enrollment of 542 (*ibid.*); at the junior high level, in almost one-half (49%) of the black students attending one school (Appx. 99-100); similarly, in 48% of the District's black students attending one high school (Appx. 100).

As to the assignment of teachers and staff, the Board conducted itself similarly vis-a-vis segregation. Thus, there has never been a black teacher, administrator, or other certificated employee in five of the "white" elementary schools, only one in two others for but one year, and in the current year, but four in the ten elementary schools located in the east "white" area of town (Appx. 112). For every year figures were available, beginning in 1951, only 50% of the black certificated em-

ployees on the elementary level were assigned to schools having over 50% black students (*ibid.*), and for the last three years over 80% of the black certificated employees were assigned to majority black schools, while in the last year, only five of the 88 certificated black elementary employees were assigned to the 15 elementary schools where black enrollment was less than 10% (Appx. 112). No black teachers, administrators or other certificated personnel were assigned to three of the five junior high schools until after 1960-61 (Appx. 112); for the last three years over half of the black certificated junior high employees have been assigned to one school, Washington, which has been over 75% black, and there still is but one black teacher at Wilson Junior High (*ibid.*).

The District has never had a black principal at any school on the "white" east side (*ibid.*) and there has never been a black principal or assistant principal at any majority white elementary school (Appx. 113); the District has only two

black principals out of 37; no high school has ever had a black principal (Appx. 117); and the District has never had a black person as superintendent, assistant superintendent or director of a department (*ibid.*). Black teachers are assigned by and large to black schools (*ibid.*), and the District's practice is to assign less well educated, less experienced and lower paid teachers to majority black schools more frequently than to majority white schools (Appx. 114). In the hiring of teachers there has been active discrimination against black applicants (Appx. 115-16), and qualified black administrators were repeatedly passed over to the extent that in their frustration they left the District (Appx. 117-18).

There is but one black nurse out of 27. She was first assigned to Pasadena High, a "white" school, but was replaced by a white nurse and transferred to Cleveland and Franklin elementary schools, 90% and 68% black, respectively (Appx. 114); the explanation was that she "could make a better contribution and would be an asset to the northwest [black] community" (*ibid.*)

Similarly in the matter of construction, rehabilitation and the closing of schools, did the Board engage in segregatory conduct. Even at the time of trial, construction plans of the Board would intensify segregation and impose greater burdens on black students than on white (Appx. 119-20). In addition, the Board placed transportable classrooms at overenrolled black schools while adjoining white schools had fewer transportables or none (Appx. 121-22). And the Board maintained overcrowded black schools while adjoining white schools were underenrolled (Appx. 122-23).

In its transfer policy the Board granted transfers that it knew were racially motivated and that intensified racial segregation in the schools (Appx. 125). In explaining its failure to integrate students, teachers and staff, the Board pointed to its neighborhood school policy and a policy against forced busing (Appx. 98).

In the face of this record, it was incumbent, of course, upon the trial court to issue an order that would desegregate the Pasadena schools. This

it did. (Appx. 3.) And the "Pasadena Plan" was submitted. (Appx. 6.) But that is only the beginning of the story. Petitioners' suggestion (Br. 4) that the mere fact that the plan was implemented at the beginning of the school year, September 1970, made the District unitary, is clearly without substance. While at that moment the no-majority-of-any-minority requirement was in effect, it takes more than one swallow to make a spring. That ratio feature was only one part of the Pasadena Plan, not the least of which, we would think, would be a good faith effort to make it work. As we shall see, the petitioners now before this Court failed in that regard, as well as in others.

Petitioners' assertion (Br. 5) "that the record shows no actions by the school board in derogation of the Plan's effectiveness" is incorrect. A brief resume will demonstrate. Following the judgment requiring Pasadena schools to desegregate (Appx. 3), the majority of the then Board voted not to appeal it (Exh. I, Appx. 271-72). In retaliation, petitioner Marcheschi sought to recall those members of the

Board who had voted not to appeal, and to be elected to the Board himself (Exhs. III-V, Appx. 272-81). Mr. Marcheschi and his two running mates made clear they were running on a platform of resistance to the district court's order which had enjoined the Board and its members "from discriminating on the basis of race in the operation of the Pasadena Unified School District" (Appx. 3). It is this which the Board and its members resisted in their arduous defense of the case. And it was the reversal of this constitutional imperative that the recallers sought to achieve. Despite the clear evidence in the record to the contrary, they refused to concede that the Pasadena schools were segregated or that the Board had had anything to do with the segregation that was extant in them and pretended that it was just happenstance. Thus, Mr. Marcheschi in May 1972, testifying in Hearings before Subcommittee No. 5 of the Committee on the Judiciary, House of Representatives, 92d Congress, on Proposed Amendments to the Constitution and Legislation Relating to Transportation

and Assignment of Public School Pupils [p. 1417], said (Appx. 491):

> "Pasadena has *always* maintained a unitary school system, and to the extent racially imbalanced schools existed, as indeed they did, they existed primarily as a result of housing patterns." (Emphasis added.)

This, in the face of such blatant conduct on the part of the Board as, for example, creating a "Geographic and Controlled Open District," a device that resulted in the transportation of black students who lived across the street from one high school to another school (Appx. 105). Or assigning white students to a white school further away from their homes than closer black schools with capacity to take them (Appx. 101).

In their efforts to recall those of the Board members who had had the temerity of voting to abide by the Court's order and get on with the business of complying with the Constitution instead of continuing the turmoil and engaging in court battle, the recallers, including the president of the Board at the time of the

trial of the present proceedings, made clear their view that mandatory pupil assignments to achieve the Constitution's goal were not to be countenanced. Thus Mr. Marcheschi told the voters, "Involuntary integration is self-defeating. It will not work!" (Pl. Exh. VI, Rep. Tr. 162, 163.)[2] And he promised that "neighborhood schools will be restored in the Pasadena School District hopefully by January 1971, certainly by September, 1971"[3] (Pl. V, Appx. 279), and that "children will go to school where they live -- in their neighborhood schools" (*ibid.*); that "minority children will be encouraged and assisted to attend schools outside their neighborhood IF THEY VOLUNTARILY DECIDE TO DO SO" (*ibid.*, Appx. 280).[4]

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[2] "Rep. Tr." refers to the Reporter's Transcript of the trial.

[3] Thus evidencing a clear intent that there be *no* desegregation in Pasadena.

[4] Missing from the appeal to the voters was the suggestion that white students would be encouraged to attend schools outside their neighborhood.

And the slogan "STOP Forced Busing" was a hallmark of the campaign. (Pl. Exh. III, Appx. 273.)[5]

While Mr. Marcheschi failed in his efforts in 1971 to recall the members of the Board and to be elected himself, he was elected to the Board at the next regular election, and from that post he continued in his efforts. He presented, on November 9, 1971 (Rep. Tr. 164-65), "The New Pasadena Plan" (Pl. Exh. VIII, Appx. 570), the principal feature of which was a system of "free choice" for the parents of black children as to whether the children wanted to "attend integrated schools in the White community or majority Black schools located in the Black community" (Pl. Exh. VIII, Appx. 572).

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[5]It will be remembered that the trial court had found the Board to have used the neighborhood school policy and policy against forced busing, plus an open enrollment or free-choice plan, and that those policies result in segregation and in increasing segregation. (Appx. 98, 105, 107.) Apropos petitioners' "STOP Forced Busing" outcry, there is nothing in the Pasadena Plan which *requires* a student to take a bus to school. (*Cf.* San Francisco Unified Sch. Dist. v. Johnson (1970), 3 Cal.3d 937, 92 Cal.Rptr. 309, 479 P.2d 669, *cert. den.* 401 U.S. 1012.) This is of some significance, we believe, in light of the fact that the proposed alternative plan of petitioners envisaged as much or more busing than the Pasadena Plan (Appx. 458, 492).

To make attendance in the black community more attractive, the caveat was appended that those schools would be "under Black control" (*ibid.*).

The next election, March 6, 1973, saw a slate of candidates running on the same platform as Mr. Marcheschi's in 1970. These persons, Richard Vetterli, Henry Myers, Jr. and Lyman Newton, the petitioners now before this Court, ran on a platform which included "stop forced busing of students and return them to neighborhood schools." (Pl. Exh. XIII, Appx. 286; see also Pl. Exhs. XII, Appx. 285; XIV, Appx. 290; XVI, Appx. 294.)[6] And Mr. Marcheschi supported them. In a Vote-O-Gram to the voters, he said: "Must elect Vetterli,

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[6]The campaign literature on behalf of Mr. Newton stated: "'He and his wife have three children . . . Only Lori attends a public school in the Pasadena School District. The other two children attended public schools until the busing issue forced them out of their neighborhood,' said Newton." (Pl. Exh. XIII, Appx. 288.) *Cf.* Cook v. Hudson, 511 F.2d 744 (CA 5 1975), *petition for cert. pending # 75-503.*

Myers and Newton to join me on school board. Essential we re-establish neighborhood schools...." (Pl. Exh. XVII, Appx. 296.) That slate won, leaving the board composed of four persons opposed to positive integration and in favor of "free choice," and one, Sam Sheats, supporting the Court's order. (Appx. 456.)

Virtually immediately upon taking office, the three new members reorganized the administrative set-up of the District. It will be remembered that among the discriminations practiced by the former members of the Board was discrimination in hiring and promoting administrative personnel (Appx. 117). To remedy that situation, the Court's order required the plan to "include programs for the assignment, hiring, and promotion of...professional staff members in such a manner as to reduce racial segregation throughout the District." (Appx. 3.)[7]

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[7]This was, of course, an appropriate order. This Court has recognized that to achieve "a public school system wholly free from racial discrimination," desegregation of the staff is an important ingredient. United States v. Montgomery County Bd. of Educ. (1969), 395 U.S. 225, 231-32. *See also*

To this end the Pasadena Plan submitted by the then Board (Appx. 5), approved by the Court on March 10, 1970 (Appx. 96), included specific provision for the hiring and promotion of administrative personnel. Under the heading "Recruitment and Selection of Administrators," (Appx. 54-55) the Plan provides for a positive effort to be made to attract and recruit minority administrators to the District. Extensive advertising of available positions was to be engaged in, including sending announcements to the college and university placement offices in Southern California, and also to a mailing list recommended by the Department of Intergroup Education, which includes agencies and districts where minority personnel may be available. The Plan required that all applicants who meet the minimum eligibility requirements were to be admitted to the examination and that all appointments had to be approved by the Superintendent. The plan took pains to make clear its intent that mere passive conduct in the search for minority

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Bradley v. School Board (1965), 382 U.S. 103. Indeed discrimination in staff is "among the most important indicia of a segregated system." Swann v. Charlotte-Mecklenburg Bd. of Educ. (1971), 402 U.S. 1, 18.

personnel was not to be tolerated.[8] Thus:

> "A positive recruitment program paralleling the teacher recruitment program will actively seek out minority group administrators, supervisors, and counselors who are interested in employment with the Pasadena Unified School District. As a part of this recruitment program, bulletins concerning job opportunities will be sent to college and university placement offices and other professional organization offices. In these bulletins, minority candidates will be especially encouraged to apply." Appx. 55.

None of the procedures was followed in the July 10, 1973 appointments by the Board, on a 3-2 vote, of three new administrators (Appx. 320, 514-16). Two Acting Assistant Superintendents and an Acting Director of Elementary Curriculum were appointed without notice and without approval of the Superintendent; and all, predictably, were Caucasian. (Pl. Exh. XX, Appx. 317-21, 516.)

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[8] The Constitution permits no less. "The school board must put its shoulder to the wheel and assume the burden of integrating the faculty and staff...." United States v. Greenwood Municipal Separate School District, 406 F.2d 1086, 1093, *cert. den.* 395 U.S. 907.

In addition, the Board thereafter, on July 31, 1973, with only Mr. Sheats objecting, appointed two Caucasion principals -- also without following the recruitment procedures outlined by the Pasadena Plan. (Appx. 517-18.)

Although professing to be concerned about the diminishing white student population (Pet. Br. 5), when a request was made to the Board by a white segment of the District for leave to withdraw from the District, Mr. Marcheschi voted to allow it to de-annex. (Appx. 330, 489-90.)

A further example of the petitioners' conduct with which the Court was faced in connection with its decision as to whether to allow a modification of the Pasadena Plan or to declare the District unitary and relieve it of federal court jurisdiction, was the petitioners' failure to continue the Black and Mexican-American Task Forces (Appx. 494). The purpose of those task forces, in the words of Mr. Marcheschi (Appx. 493), was to provide a communicative link between the board and those identifiable segments (*i.e.*,

black and Mexican-American) of the community. The last time there were these task forces was the year ending June 1973. (Appx. 494.) So, upon petitioners' taking office, the minority task forces ceased to exist.

And even as to its treatment of its one black member, the petitioners discriminated, giving the four Caucasian members specific spheres of influence but allowing Mr. Sheats none (Appx. 524-25).

Accordingly, contrary to petitioners' assessment (Br. 5), the record shows continued action by the Board in derogation of the Plan's effectiveness.

Though conceding, as they must, that a declining white population was not unique to Pasadena (Br. 5), petitioners nevertheless subtly suggest that but for the Pasadena Plan, this would not have occurred. (Br. 25.) This is simply contrary to fact. Even before the 1970 judgment, the phenomenon of declining white population and increasing minority population had been occurring in Pasadena. The Board recognized it in its very presentation of the Pasadena Plan (Appx. 8):

> "Ethnic imbalance in certain schools of the Pasadena Unified School District has increased in recent years....
>
> "In the past seven years, the main factor contributing to the increase of Negro students in certain schools has been the immigration of large numbers of Negroes in certain housing areas of the Pasadena school district, and the emigration of Anglo-Caucasians.
>
> "...The number of Anglo-Caucasian pupils decreased from 22,463 to 17,859 during this same period 1962-1969 , a drop of 4,604 students. The percentage declined from 73.8% to 58.3%, or a decrease of 15.5% of the total enrollment. ..."

Indeed, the phenomenon had been going on since 1948 (Appx. 347, 507, 601).

To attribute "white flight", therefore, to the Pasadena Plan is simply without foundation. And the record does not sustain it. Quite the contrary, the phenomenon has been going on throughout California and the nation irrespective of whether there is court ordered or otherwise occurring desegregation (Appx. 393, 347, 562). And to the extent that there

was some increase of white loss just after the Pasadena Plan was instituted, none has been shown to be due to the Plan, other factors being extant at the time in the city. (Appx. 505.) Indeed, after the Pasadena Plan was instituted, there was a slackening of the trend (Appx. 380). This was only the second year since 1965 that that had occurred (*ibid.*) Moreover even Mr. Marcheschi acknowledged that all of the drop could not be attributed to the Pasadena Plan (Appx. 298), and to the extent that it could, the flight was over, the families who ran having already run (Appx. 325, 326, 476). In the words of petitioner Marcheschi, "the brunt of that phenomenon is behind us." (Appx. 47.6.)

With regard to their concern for the achievement of minority children (Pet. Br. 5), petitioners again subtly suggest, that somehow the Pasadena Plan is to blame. (Pet. Br. 6.) Not only is this not the fact, but to the extent that there is evidence on the question, it is that during the time of the Pasadena Plan the black children have not suffered from the cumulative deficit phenomenon. Cumulative

deficit is the term used to describe the phenomenon that minority children, already behind when they start school, tend to get farther and farther behind as they go through school (Appx. 558). Prior to 1970 the black children in the Pasadena schools suffered from this cumulative deficit. (Appx. 558-59.) But since the Pasadena Plan was put into effect, the black children in the system have been growing at the same rate of speed as the white; there has not been any cumulative deficit. (Appx. 559, 564.) Few school districts have achieved that (Appx. 559). In other respects as well, stability, self-esteem and less anxiety, has the Pasadena Plan served the black and the other students of the District (Appx. 547-48).

With regard to one facet of the Pasadena Plan -- that there shall be no majority of any minority in the schools -- petitioners seize (Pet. Br. 7) upon a statement by the trial court during colloquy with counsel (Appx. 270) that that meant that there must be annual reassignments of the students. There is nothing in the record to support that contention. There is no reason why

stable plans cannot be made for many years in the future. And the mere fact that the staff miscalculated once[9] does not mean that they will do so again.[10]

Petitioners are mistaken in their assertion (Pet. Br. 8) that the essential basis for the trial court's rejecting petitioners' motion was its insistence on a decreed racial mix and a distaste for a different busing plan.[11] Faced with a Board whose members had consistently

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[9]They had taken the trend into account in drawing up the Pasadena Plan in the first place. (Appx. 509.)

[10]We cannot refrain from commenting upon this concern about redistricting. No one seems aghast at this problem when it might have to be done because of overcrowded or under-utilized schools, or when an old school is abandoned or a new one built. It is only for desegregation objectives that the assignment of students becomes insuperable.

[11]No doubt the court would have been pleased had its "lifetime" hope been realized (perhaps we all should), but it recognized (Appx. 456) that that might not be possible -- state and national, as well as Pasadena's, demographic phenomena, perhaps, point in another direction -- but it cannot be faulted, because it also recognized (*ibid.*) that that time had not yet come. In any event, this Court "reviews judgments, not statements in opinions," or, we might add, in colloquy

fought the court's order and not given it the impetus which everyone recognizes--or should--is necessary to make the transition from segregation to integration; faced with a Board whose members the court could not, frankly, trust--any more than it could have, the earlier boards whose members professed integrative intent in the 60's but acted segregatively; faced with a Board whose members blatantly defied the Plan which had been worked out to attempt to get minorities into administrative and executive positions; faced with the testimony of the Superintendent that the Pasadena Plan is preferable to the proposed plan (Appx. 519); and faced with a request from Board members that the District be allowed to go back to a freedom of choice plan and to virtually the same segregative system it had when

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with counsel. Black v. Cutter Laboratories (1956), 351 U.S. 292, 297. And, to paraphrase this Court in Black, "At times, the atmosphere in which [colloquy takes place] may become so surcharged that unnecessarily broad statements are made." 351 U.S. at 298. Under all the facts in the case, it cannot be said that the trial court abused its discretion or that the Court of Appeals erred in sustaining it. (Swann v. Charlotte-Mecklenburg Bd. of Educ. [1971], 402 U.S. 1, 30.)

this litigation all began, the court did the only thing it could do: deny the motions to allow that to be done. In reality -- in real practical effect -- the case presented to the trial court in January 1974 is essentially as though it had been presented to it in April or May 1970. The specific individual members of the Board had changed, but the Board had not.

SUMMARY OF ARGUMENT

I

Petitioners are in no position to attack the validity of the original judgment requiring the school district to desegregate. That decision is final, and it not having been beyond the jurisdiction of the court to render it, it cannot be collaterally attacked.

II

The Pasadena Unified School District is a de jure segregated school system. Despite the court order for it to become a unitary system, it has not achieved that

status. That being the case, the trial court did not abuse its discretion in refusing to lift judicial control over the district, for the vestiges of past discrimination remain.

In considering whether to dissolve the injunction and allow the Board members to proceed on their own, the trial court had not only the right but the duty to consider that those individuals had opposed the original order of desegregation; had, despite overwhelming evidence to the contrary, refused to recognize that the segregation of the schools in Pasadena was not happenstance but had been designedly effectuated and maintained by the Board, who had vowed that they would not allow "forced busing"; and even from the very first pronouncement of the court's order, were dedicated to the maintenance of the neighborhood school policy, which was one of the main factors in the first instance in the Pasadena District's being a dual and segregated school system. Under these circumstances, it was not an abuse of discretion for the court not to have dissolved the injunction.

III

The alternative plan submitted to the court by petitioners was not a plan which gave promise of desegregating the system and desegregating it now. It was, in essence, a "free choice" plan which predictably would have placed the Pasadena School System back in the very segregated posture it was when the lawsuit was first begun. Pasadena had previously tried free choice plans and they had failed to desegregate the system. Moreover, other school districts in California had tried comparable plans and they, too, had failed to work. Under these circumstances, the trial court did not abuse its discretion in not approving the proposed plan.

IV

The case is not moot. Nor is it moot as to either the plaintiffs-respondents or the United States. The controversy is alive and vigorous.

Although the trial court did not use the very words to declare the action a class action, all the parties to the litigation knew and considered it to be

such, and it was thus tried; in reality, therefore, the Rule 23(c)(1) declaration was made. Moreover, and even had not the class action determination been made, the mere graduation of the named plaintiffs does not moot the case, for this being a race discrimination, school desegregation case, it falls within the "capable of repetition yet evading review" line of decisions of this Court.

In any event, the presence of the United States as party plaintiff-intervenor prevents the case from being moot. The United States had the absolute right to, and did, intervene in the case to desegregate the Pasadena School System. It did this because of the strong public interest in obtaining compliance with the Equal Protection Clause of the Constitution. That public interest did not disappear with the graduation of the named plaintiffs. The class for whose benefit the litigation was carried forward still remains.

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In sum, the judgment should be affirmed.

ARGUMENT

I

THE COURT BELOW PROPERLY DENIED THE MOTIONS TO MODIFY THE PASADENA PLAN AND TO RELIEVE THE PASADENA BOARD OF EDUCATION OF THE INJUNCTION AGAINST OPERATING A SEGREGATED SCHOOL SYSTEM[12]

It is to be remembered that it is the Board of Education which seeks to be relieved from court supervision altogether, or to be permitted, contrary to the present court order, to institute an alternative or modified plan. It has the burden,

[12]We do not understand how petitioners can now attack the validity of the trial court's 1970 judgment (Pet. Br. 12). That judgment was not appealed. It became final, and that's that. Certainly the judgment was not beyond the jurisdiction of the court. Moreover, petitioners misread the record in this case in their reliance (*ibid.*) on Swann v. Charlotte-Mecklenborg Bd. of Educ. (1971), 402 U.S. 1, and Milliken v. Bradley (1974), 418 U.S. 717. Just as in Swann (402 U.S. at 24), the Board here operated a segregated school system. And, with a variation on Swann, it has not now come forward with an acceptable plan which will insure that the District will not again be so segregated. Accordingly, just as in Swann (at 281), "the use made of mathematical ratios was no more than a starting point in the process of shaping a remedy, rather than an inflexible requirement." The

therefore, of showing its entitlement, and that in denying its motion the trial court abused its discretion. United States v. Swift & Co. (1932), 286 U.S. 106, 114. The burden is especially heavy in a school desegregation case where the propensities for evasion by those challenged as to their duty to provide equal protection are an historic truism. Jones v. Alfred H. Mayer Co. (1968), 392 U.S. 409, 448, n. 5, concurring opinion; Swann, *supra*, 402 U.S. at 13.

And it is to be remembered that "the [14th] Amendment nullifies sophisticated as well as simple modes of discrimination." Lane v. Wilson (1939), 307 U.S. 268, 275. For where "there has been discrimination, whether accomplished ingeniously or ingenuously, [it] cannot stand." Smith v. Texas (1940), 311 U.S. 128, 132.

Petitioners are quite in error in their insistence (Pet. Br. 13) that the

question here is whether petitioners have shown enough change since the judgment to warrant the court to relieve them. As we have seen and shall see again, petitioners have simply not carried their burden.

trial court's judgment means "that the Pasadena School district has to be reassigned each year to maintain the existence of its racial balance formula." The judgment says no such thing, nor did the trial court say any such thing.[13] The judgment does mean that petitioners must plan ahead.

A. The Pasadena School District Is Not And Has Not Been A Unitary System.

As previously noted, petitioners' reliance (Pet. Br. 14) on Swann is misplaced. What Swann says is that year by year adjustments of the racial composition of student bodies are not constitutionally required "once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system." Swann, 402 U.S. at 32. This is simply not

[13] We have discussed above, fn. 11, p. 26, petitioners' seizure on the colloquy between the Court and counsel wherein the Court expressed its expectation for the future.

the case here. A school board which has, for example, discriminated in the assignment of its faculty and staff members and in the hiring of teachers and the hiring and promoting of its administrative personnel (Appx. 112-18), which makes no effort to afford opportunity for minorities to apply -- although its desegregation plan specifically laid out a comprehensive system just for that purpose -- and which appoints, at the very time it is supposed to be desegregating, Caucasians to three top administrative posts and two principalships (Appx. 514, 516, 518), can scarcely lay claim to having eliminated racial discrimination from the system. No more can it lay claim to be allowed to go henceforth on its own.

Again, petitioners are quite in error in their assertion (Pet. Br. 15-16) that the Pasadena Plan has been "'operated in a constitutionally permissible fashion so that the goal of a desegregated, non-racially operated school system [has been] rapidly and finally achieved,'" a requirement which petitioner (Pet. Br. 15) concedes Raney v. Board of Education (1968), 391 U.S. 443, mandates. Not only have they failed to

carry out the Plan as to student assignment, but they have also discriminated in the employment of administrative and staff personnel (Appx. 516, 518).

Petitioners are similarly in error when they say (Pet. Br. 16) that one of the bases for the trial court's denial of their motions is that the demographic changes which caused some schools to fall outside the racial balance formula prevent the school system from being treated as unitary. The Court said no such thing and there is nothing in its opinion (Appx. 452-59) which can give rise to such an inference; nor did the court below (519 F.2d 430).

Accordingly, petitioners set up a straw man in arguing (Pet. Br. 16) that "the demographic changes that caused some schools in the system to fail to maintain the prescribed racial balance do not adversely affect the school system's unitary status," and their reliance on two Court of Appeals decisions, Mapp v. Board of Education, 525 F.2d 169 (CA 6, 1975), and Calhoun v. Cook, 522 F.2d 717 (CA 5 1975), is misplaced. Petitioners

fail to appreciate the thrust of this case and the meaning of the opinion of the court below (519 F.2d at 437):

> "When viewed from the perspective of this long line of Supreme Court authority, we cannot conscientiously hold that the district judge abused his broad equitable discretion in refusing to modify or dissolve his Decree. His decision was primarily based upon his finding that there had not been a full and genuine implementation of his original Order such as would achieve the elimination of racial discrimination 'root and branch.' The directive of the dictum in *Swann* by its very terms becomes operative "once the affirmative duty to desegregate has been *accomplished* and racial discrimination is *eliminated* from the system." 402 U.S. 1, 31-32, 91 S.Ct. 1267, 1284, 28 L.Ed.2d 554 (1971) (emphasis added). On the specific facts of this case as revealed from the record and reiterated *supra*, it was reasonable for the District Court to conclude that full and effective elimination of racial discrimination had not been achieved during the three school years following the initial year in which the Pasadena Plan was in effect. If desegregation was 'accomplished' or 'eliminated' after the implementation of the Pasadena Plan, such was a transitory and temporary achievement, enduring for a period of the utmost brevity."

Mapp recognizes the problem. Thus, at 172 of 525 F.2d, the Court says:

> "...Presumably, the district judge might have ordered a further realignment when the first plan did not achieve the proper balance ratio, and yet another if that did not hold. Indeed if such were found to have been required to carry out the constitutional mandate to eliminate the vestiges of a dual system, it would simply have to be done, and we have no doubt the district judge would faithfully have carried out that duty...."

That is precisely what the trial judge did here.

Similarly in Calhoun, the trial court found that the remaining one-race schools in the Atlanta district "are the product of its preponderant majority of black pupils rather than a vestige of past segregation." 522 F.2d at 719. And the Court of Appeals held that those findings were not clearly erroneous. The case at bar is just to the contrary. The trial court found that the vestiges of past segregation still remain, and the Court of Appeals here found that *those* findings are not clearly

erroneous[14] -- as indeed they are not.

So the fact that under different sets of circumstances some courts have allowed predominantly black schools has no bearing on the circumstances in Pasadena. Here there has not been the "full and genuine implementation of [the] original Order such as would achieve the elimination of racial discrimination 'root and branch.'" 519 F.2d at 437. Until that is done, petitioners have no cause for complaint.

B. Petitioners' Opposition To The Pasadena Plan Was A Factor The Trial Court Had The Duty To Take Into Account In Its Decision As to Whether The District Should Be Relieved Of the Court's Order.

There is no doubt that petitioners had and have every right, including a constitutional one, to express their opposition

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[14]The "two-court" rule is then applicable. Comstock v. Group of Institutional Investors (1948), 335 U.S. 211, 214. The affirmance by the court below is especially significant in light of the fact that the Ninth Circuit has adopted the "purposeful" standard of segregative intent, Johnson v. San Francisco Unified Sch. Dist. (1974), 500 F.2d 349, 351; Soria v. Oxnard Sch. Dist. Bd. of Trustees (1973), 488 F.2d 579, 585. *See* fn. 11 and text thereto.

to the Pasadena Plan and to the court order which required them to refrain from discriminating on the basis of race in the operation of the Pasadena Unifed School District. But one of the beauties of free speech -- communication, if you will -- is that others are entitled to take the speaker at his word, for words portend action.[15]

Petitioners' views on the desegregation of the Pasadena School System are not views that have just come to fruition as a result of sincere efforts to desegregate. Petitioners stand in the shoes of -- indeed, it is as though they are the same persons -- those who fought the court order requiring dismantling of the discrimination, who sought to overturn the court's order, which goal if successful in 1970 would have meant that the racially discriminatory school system would have continued on its merry way. Even in the face of the record made in court, petitioners refused to acknowledge that the District had been guilty of racial discrimination (Appx. 491). And they wanted and have worked, since the original court order, to return to the old way -- to return to the "neighborhood school." As this Court in Swann said (402 U.S. at 28):

> "...All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation...."

The trial court recognized in its original ruling (Appx. 129) that the neighborhood school concept is a valid one, but it also recognized that it cannot be used as a mask to hide the District's discrimination. This case should be viewed as though the motions for dissolution of the injunction and for relief from court supervision had been made in 1970, when the effort to overturn the court's order was made or when the recall was in progress. Just as it would have been improper for

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[15] *Cf* . Doherty v. Wilson, 356 F.Supp. 35, 40 (MD Ga 1973): "A school board may fire, refuse to rehire or refuse to hire a teacher who has exercised constitutionally protected rights in such a manner as to seriously impair or destroy her effectiveness as a teacher."

the court then to have granted the motions and allowed the Board to go it on its own, so would it have been improper for the court to have done so now. In plain language, the trial court was correct in not trusting petitioners to carry out the mandate for desegregation (Appx. 459). It is as simple as that. It cannot be said that the court abused its discretion.

Petitioners' citation (Pet. Br. 19) of the Equal Educational Act of 1974, 20 U.S.C. 1701 *et seq.*, avails them nought. Aside from the fact that that act was passed (August 21, 1974) after the trial court's order herein (May 15, 1974, Appx. 452), it is axiomatic that Congress may not decree what shall or shall not be a denial of the equal protection of the laws. North Carolina Board of Education v. Swann (1971), 402 U.S. 43, 45-6. Even more pointedly, the very statutes petitioners rely upon point up their inapplicability here. Thus, 20 U.S.C. 1707 says: "*When* a court...*determines* that a school system *is* desegregated, or that it *meets* the constitutional requirements or that it *is* a unitary system, or that it *has no*

vestiges of a dual system, and *thereafter* residential shifts in the population occur which result in school population changes in any school within *such desegregated* system, such population changes so occurring shall not, *per se*, constitute a cause for civil action for a new plan of desegregation or for modification of the court approved plan." (Emphasis added.)

None of the above conditions has occurred. No court[16] has determined that the Pasadena School System is desegregated, or that it meets constitutional requirements, or that it is a unitary system or that it has no vestiges of a dual system. And it is the school board herein that is seeking a new plan or a modification, not respondents. Indeed, petitioners are seeking to be completely free of judicial control. But by their conduct they have not yet achieved the status which would allow this. They have not "put their

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[16]Nor even the dissenting judge in the court below (519 F.2d at 441).

shoulder to the wheel" (United States v. Greenwood Municipal Separate School District, *supra*, 406 F.2d 1086, 1093). The trial court was amply justified in pointing out (Appx. 458) how things might have been different had petitioners given the Pasadena Plan cooperation and support. And it was well warranted in its holding (Appx. 459) that to grant the Board relief, leaving it to its own decisions, would "surely be to sign the death warrant of the Pasadena Plan and its objectives."

Petitioners complain of "forced busing." (Pet. Br. 18; Appx. 273, 278, 281, 283, 285.) But in Swann, this Court said (402 U.S. at 430):

> "... [W]e find no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of school desegregation. Desegregation plans cannot be limited to the walk-in school."

See also the companion Swann case, North Carolina Bd. of Educ. v. Swann (1971), 402 U.S. 43, striking down as unconstitutional a statutory prohibition against "involuntary bussing" "for the purpose of creating a balance or ratio of race."

Petitioners complain (Appx. 277) against "involuntary integration." But in McDaniel v. Barresi (1971), 402 U.S. 39, this Court approved just that.

In the light of all this, the trial court was amply warranted in its observation (Appx. 458) that petitioners' vocal and active resistance may be the whole tragedy of the claims of petitioners as to the inadequacy of the Pasadena Plan. Indeed, no matter what may be the ultimate distilling of this Court's statement in Keyes v. School District No. 1 (1973), 413 U.S. 189, 208, that "the differentiating factor between de jure segregation and so-called de facto segregation...is *purpose* or *intent* to segregate"[17] (emphasis in original), it must mean, at least, that school board members' views and statements may be inquired into. Accordingly, the trial court was well warranted -- indeed it had the duty -- in considering petitioners' views on "forced busing."

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[17] *Cf.* Hart v. Community Sch. Bd. of Educ., 512 F.2d 37, 51 (CA 2 1975) with Higgins v. Bd. of Educ., 508 F.2d 779, 793, 797 (CA 6 1974).

C. The Trial Court Properly Disallowed The Free Choice Modification Proposed By Petitioners.

Petitioners continue to base their case on "hope" (Pet. Br. 20). They made no inquiry nor did they conduct any survey or study to present to the court so that it had information from which to judge whether the proposed plan would work (Appx. 492, 501). The Superintendent testified as to the superiority of the Pasaden Plan over the proposed plan (Appx. 529). The evidence showed, predictably, that the proposed plan would result in resegregation of the Pasadena School System to virtually the same status as when the case was first begun. (Appx. 224, 499-500, 529, 583, Rear Folio). For integration, the proposed plan would entail as much or more transportation than the Pasadena Plan (Appx. 492, 458), Accordingly, not only did the trial court not abuse its discretion in refusing to allow the proposed plan, but, we submit, had it been allowed, that would have been an abuse of discretion requiring reversal. Green v. Sch. Bd. of New Kent County (1968), 391 U.S. 430; Raney v. Bd. of Educ. (1968), 391 U.S. 443; Monroe v. Bd. of Commissioners (1968), 391 U.S. 450.

See also United States v. Midland Independent Sch. Dist., 519 F.2d 60 (CA 5 1975); Brinkman v. Gilligan, 503 F.2d 684 (CA 6 1974), and Morales v. Shannon, 516 F.2d 411 (CA 5 1975), *cert. den.* 44 L.W. 3356.

In Green v. County Board of New Kent County, Virginia (1968), 391 U.S. 430, this Court made perfectly clear that the "freedom of choice" plan proposed here is improper, just as was the freedom of choice plan in Green. In that case, the school board contended that it had fully discharged its obligation under Brown II "by adopting a plan by which every student, regardless of race, may 'freely' choose the school he will attend." 391 U.S. at 430. This, despite the fact that in operation, and even though there were but two schools in the system, no black students had applied to the "white" school and no white students had applied to the "black" school. Contrary to the position taken by the majority of the Board in the case at bar, that given free choice,[18] if the result is a segregated school system, they would be happy with it (Pl. Exh. XIX, p. 2, Rep. Tr. 173);

[18] Sugared up by "incentives to attend another school.

this Court would not countenance it. While it recognized that there may be problems in the dismantling of a former dual system, nevertheless the thrust of Brown II is that the school board is "charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." 391 U.S. at 437-38. "The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work *now*." 391 U.S. at 439 (emphasis in original).

The "freedom of choice" plan simply would not do for it has shown by its operation that it results in a segregated system.[19]

This Court also found significant that the board in Kent County did not begin its desegregation efforts until eleven

[19] The experiences in New Kent County are significant for there, "there is no residential segregation; persons of both races reside throughout." 391 U.S. at 432. Nevertheless, the "neighborhood" concept in the milieu of a segregated system just did not work.

years after Brown I, ten years after Brown II. The record of the Board in the case at bar is even worse. It did not begin its efforts until 16 years after Brown I, 15 years after Brown II, and then only after prodding by the court's order.

In rejecting the "freedom of choice" plan in Green, the Court pointed out that "rather than further the dismantling of the dual system, the plan has operated simply to burden the children and the parents with a responsibility which Brown II placed squarely on the school board." 391 U.S. at 441-42.

In the companion case, Raney v. The Board of Education of the Gould School District (1968), 391 U.S. 443, the Court similarly found that the "freedom of choice" plan did not result in desegregation but only in segregation. Said the Court, at 447-48: "Our decision in Green ...establishes that the [freedom of choice] plan is inadequate to convert to a unitary nonracial school system.... [It] has operated simply to burden children and

their parents with a responsibility which Brown II placed squarely on the school board."

Nor does a variation on the same theme produce any different rule. In the third case decided by this Court on May 27, 1968, Monroe v. Board of Commissioners of the City of Jackson, Tenn., 391 U.S. 450, a "free transfer" plan was instituted under which a student was required to register in his "neighborhood" school after which he could "freely" transfer out. As could be anticipated, the result was neighborhood "black" and neighborhood "white" schools. This Court pointed out that the District Court had predicted that very result even before the institution of the plan. 391 U.S. at 457-58. And now, after the fact, the Court said (at 458-59), "the 'free-transfer' system has permitted the 'considerable number' of white or Negro students in at least two of the zones to return, at the implicit invitation of the Board,[20] to the comfortable security of the old, established

[20] *Cf.* the platforms, mentioned above, of the majority of the present Board in the instant

discriminatory pattern." As in Goss v. Bd. of Educ. of Knoxville (1973), 373 U.S. 683, 686, the "free transfer" system

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case to Return to Neighborhood Schools (Appx. 286). This kind of official governmental encouragement has been recognized by this Court as being sufficient to require nullification under the Fourteenth Amendment of a seemingly neutral provision, as for example, Proposition 14 on the November 1964 California ballot which allowed a homeowner to sell or decline to sell his property to another person as he saw fit. Reitman v. Mulkey (1967), 387 U.S. 369. *Cf.* Professors Karst and Horowitz, "Emerging Nationwide Standards for School Desegregation -- Charlotte and Mobile, 1971," in 1 The Black Law Journal 206, 219 (1971): "Judge Wright [in Hobson v. Hansen, 269 F.Supp. 401 (D.C. 1967), *aff'd as modif. sub nom.* Smuck v. Hobson, 408 F.2d 175 (CA DC 1969)] spoke of the need to disabuse the entire community of the idea that black school children have been officially separated from whites in order to avoid the implication of an officially-imposed stigma of caste. When a school board deliberately chooses a plan that does not reduce racial imbalance, in the face of effective alternative plans that are reasonably available, the community is not so unsophisticated as to fail to notice, and to draw the conclusion that such a stigma has been officially imposed...." The result can only be the generating in the minority of the "feeling of inferiority as to their status in the community" so rightly condemned in Brown I (347 U.S. at 494). To paraphrase this Court in Wright v. Council of the City of Emporia (1972), 407 U.S. 451, 466: "the message of the action [would not escape] the Negro children in [Pasadena]."

"operates as a device to allow *resegregation* of the races to the extent desegregation would be achieved by geographically drawn zones." Monroe, *supra*, 391 U.S. at 459 (emphasis in original). The same is true in the case at bar.[21]

And in words written as though for this very case, the Court in Monroe said of the school board's argument:

> "...We are frankly told in the Brief that without the transfer option it is apprehended that white students will flee the school system altogether. 'But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them' Brown II, at 300, 99 L Ed at 1106." *Ibid.*

In accord is Cooper v. Aaron (1958), 358 U.S. 1. There, the school board sought postponement of the requirement to desegregate the Little Rock, Arkansas schools because of the "violence," "chaos, bedlam and turmoil," "tension and unrest" which had been engendered. These, indeed, are weighty considerations, but said the Court, "law and order are not here to be preserved by depriving the Negro children of their constitutional rights." (Cooper v. Aaron, 358 U.S. at 16).

Mr. Justice Brennan, as individual justice in Keyes v. School District No. 1, *supra*, 396 U.S. 1215, pointed out the same rule. There, the Circuit Court had stayed an order of the District Court which had the effect of requiring the school board to partially implement a school desegregation plan prepared by the board, but later rescinded after a change in membership following a school board election. The Court of Appeals based its action on the fact that "a plan of desegregation 'must depend for its success on

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[21] It is not without significance that the petitioners, or their supporters, point to the adoption by the California voters of Proposition 21 on the November 1972 ballot in justification. Appx. 283, 292. Indeed, that vote can be taken as an indicator that the proposed "freedom of choice" plan will operate to *resegregate* the district. This, however, as Green, *supra* (391 U.S. 430), and its companion cases show, the courts will not allow. (Prop. 21 added §1009.6 to the California Education Code. It read: "No public school student shall, because of his race, creed or color be assigned to or required to attend a particular school." The provision was declared unconstitutional by the California Supreme Court in Santa Barbara School District v. Superior Court (1975), 13 Cal.3d 315, 530 P.2d 605, 118 Cal.Rptr. 637.

the understanding cooperation of the people in the area.'"[22] In setting the Court of Appeals' stay aside, Mr. Justice Brennan said: "But the desirability of developing public support for a plan designed to redress de jure segregation cannot be justification for delay in the implementation of the plan." 396 U.S. at 1217. No more can it be justification for scuttling it.

In Davis v. Board of School Commissioners of Mobile County (1971), 402 U.S. 33, 37, this Court said:

> "...Having once found a violation, the district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation."

This cannot be said to be the case of the plan petitioners have proposed, for it contemplates that "on the basis of providing parents with new options as to the type of education available, the ethnic balance at some sites may be altered from what it is at present." Appx. 462. This is a nice way of saying the schools will

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[22] This is not unlike what petitioners are saying here.

be segregated. And the "option" offered to students to spend one-half a day a week in an integrated atmosphere (*ibid.*) is subject to the same disqualification as in Green, Raney, and Monroe, *supra*. The Board cannot thus abdicate its responsibility.[23]

No matter how sugar-coated the presentation,[24] petitioners' proposed plan is nothing other than a plain "freedom of choice" plan.[25] As to that, the words of

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[23] This, over and above the obvious defect, both educationally and culturally, of a one-half dabble in integration. (Appx. 312, wherein the Superintendent stated he "did not believe ½ day a week would provide the opportunity for growth and development from young people to adults and contributing members to this community." And again, Appx. 526: "[T]hat particular aspect of the plan does not provide the kind of interchange among the different ethnic groups that I believe is worthwhile.")

[24] There is no reason why the "magnet" school concept (Appx. 460-61) cannot be employed under the Pasadena Plan (Appx. 457). Indeed, such programs are going on even now (Appx. 341-46). And in the mind of at least one of the proponents of petitioners' proposed plan (Dr. Myers), that concept is neither a practicality under the proposed plan nor of any particular significance (Appx. 304-05).

[25] It likewise, perhaps, embodies a "freedom of transfer" concept. See ¶[3] of the Proposed

the court below in another case, in affirming the rejection by a different District Court of a "freedom of choice" plan for Las Vegas in Kelly v. Guinn (1972), 456 F.2d 100, 108-9, *cert. den.* 413 U.S. 919, cannot be gainsaid:

> "'Freedom of choice' plans usually, if not invariably, fail to eliminate school segregation. Such plans rest upon the theory that the school district's entire obligation is to refrain from excluding any student from any school because of race. But once it is determined that a school district has contributed to the creation and maintenance of segregation, neutrality is no longer enough. Then the school district's duty is not limited to the removal of discriminatory bars to school integration; it is charged with an affirmative duty to eliminate

Plan (Appx. 462) where it is pointed out that "all students who are presently enrolled in our schools would be able to continue to attend the school that they now attend if the parents so choose or they would be free to choose from any other school within their zone."

> segregation.* 'Freedom of choice' plans operate 'simply to burden children and their parents with a responsibility which Brown II... placed squarely on the school Board.' [Citations.] The attempt to shift responsibility rarely works. The parents and children are either unable or unwilling to carry the burden.[26] Not surprisingly, they failed to do so in this instance.
>
> *"Nor is the duty limited 'to the correction of that portion of the segregation that might reasonably be attributable to past discrimination.' Once it has been established that 'past discrimination played some causal role in producing segregated patterns,' Swann requires 'the complete elimination of those patterns.' Fiss, The Charlotte-Mecklenburg Case, note 7, 38 Chi.L.Rev. at 705."

Nor is there any reason, much less showing, that it would work here.[27]

[26] *See generally* United States Commission on Civil Rights, Southern School Desegregation 1966-'67 (1967), at 45-69.

[27] Without purporting or attempting to be an exhaustive list, some of the other Court of Appeals cases which have disapproved "freedom of choice" plans are: Cato v. Parham, 403 F.2d 12 (CA 8 1968); Jackson v. The Marvel Sch. Dist. No. 22, 416 F.2d 380 (CA 8 1968); United States v. Lovett, 416 F.2d 386, 392 (CA 8 1969); United States v.

It is not a matter, as petitioners suggest (Pet. Br. 21) of racial balance or whether a "free choice" plan may ever be allowed. (Pet. Br. 22.) It is simply that the proposed plan would have resegregated the district, a situation which, despite petitioners' lack of concern about it (Pl. Exh. XIX, p. 2, Rep. Tr. 173; Appx. 500), would surely have been intolerable. For it is not to be forgotten that "the measure of any desegregation plan is its

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Jefferson Co. Bd. of Educ., 417 F.2d 834, 836 (CA 5 1969); United States v. Choctaw Co. Bd. of Educ., 417 F.2d 838, 841 (CA 5 1969); Hilson v. Ouzts, 421 F.2d 632 (CA 5 1970); Boykins v. Fairfield Bd. of Educ., 421 F.2d 1330 (CA 5 1970); Steele v. The Bd. of Public Instruction of Leon County, 421 F.2d 1382 (CA 5 1970); United States v. The Bd. of Educ. of Baldwin County, 423 F.2d 1013 (CA 5 1970); Hall v. St. Helena Parish Sch. Bd., 424 F.2d 320 (CA 5 1970); Hilson v. Ouzts, 425 F.2d 219 (CA 5 1970); Clark v. Bd. of Educ. of Little Rock Sch. Dist., 426 F.2d 1035, 1043 (CA 8 1970), *cert. den.* 402 U.S. 952; United States v. Bd. of Educ. of Webster County, 431 F.2d 59 (CA 5 1970); United States v. Georgia, 466 F.2d 197, 199-200 (CA 7 1972). *See also* cases listed in 44 Modern Federal Practice Digest, 1975 Cumulative Ann. Pocket Parts, Key No. "Schools & School Districts" 154, p. 305, under the headnote: "If there are reasonably available other ways promising speedier and more effective conversion to a unitary nonracial school system, freedom of choice must be held unacceptable."

effectiveness." Davis v. Board of School Commissioners (1971), 402 U.S. 33, 37. Virtually identical plans proved ineffective in the two cities in California where they were tried, San Bernardino and Richmond. (Appx. 549.) Just as in Green and Raney, *supra*, where *not a single white child* chose to attend the "black" schools (391 U.S. at 441 and at 446), and as in Monroe, where *not a single white child* transferred to any "black" school (391 U.S. at 453), so was the experience in California. In both San Bernardino (Appx. 554) and Richmond (Appx. 556) were the plans marked by the *absence of even a single white student participant.* How, then, can the trial court be faulted?[28] And how is it even thinkable that the trial court should be compelled to allow such a plan? (Pet. Br. 20.) The answer, of course, is the trial court was correct and its judgment should not be disturbed.

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[28] It was entirely appropriate, therefore, for the trial court to have noted in its opinion (Appx. 456-57):

Amicus curiae Chattanooga Board of Education apparently agrees, for it says (Br. 31): "there is a responsibility upon school boards to undertake an affirmative duty to desegregate; and an effort that is practical, honestly conceived, honestly implemented, and which has reasonable chances of accomplishing the desired goal." It being crystal clear that the proposed alternative plan of petitioners has no reasonable chance of success, petitioners in the instant case have not performed their duty. Where "the natural, probable and foreseeable consequence of [school board action] is to bring about or maintain segregation," such action cannot be permitted. United States v. School District of Omaha, 521 F.2d 530 (CA 5 1975), *cert. den.* 44 U.S. Law Week 3280; Milliken v. Bradley (1974), 418 U.S. 717, 725, 753.

> "What the Alternative Plan and its advocates--four of the present five Board members--offer is the hope that 'establishment of unique educational alternatives at each K-6 school site' and 'salesmanship' will convince enough 'white parents' whose children have left the Pasadena Unified School District to return *and choose* the same 'educational alternatives' that black parents do in order to accomplish an integrated school system. Hope may spring eternal, but realism exposes the folly of the belief that one who left a school district because his children were forced to attend schools with Negro children would now voluntarily choose that alternative.*
>
> *Presumably, these are the same white parents who helped elect Mr. Marcheschi, Dr. Vetterli, Dr. Meyers and Mr. Newton in response to the pampaign promise to 'Stop Forced Busing.'" (Emphasis in original.)

II

THIS CASE IS NOT MOOT

Hardly.

Scarcely a month ago (December 22, 1975), Mr. Justice Rehnquist granted a stay of an order of the District Court in this case, granted pursuant to a motion by plaintiffs and by presently attending students and their parents. The order of the District Court had required petitioners to restore a school to its status prior to petitioners' having taken action which the trial court found placed an undue burden on black students as distinguished from white, and was segregative. (Pasadena

City Bd. of Educ. v. Spangler, No. A-538 in this Court, October Term 1975.) In that order, Mr. Justice Rehnquist stated (p. 1, Order of Dec. 22, 1975) that while ordinarily he would have denied such a stay (The Circuit Court of Appeals had also denied it and the appeal from the order is pending before that Court, No. 75-3300 therein), he did so because of the granting of certiorari in the instant case and because one of the issues purportedly, as we say, presented is whether "'a unitary system which has been in compliance for four years remains subject indefinitely to the control of the trial court which entered the decree.'" As we have seen above, this question is not one which is properly before this Court. The Pasadena School System is not and has not been a unitary system. But be that as it may, that proceeding presented to Mr. Justice Rehnquist demonstrates that the Pasadena School Desegregation matter is far from moot and is, rather, the subject of a live, vigorous, even heated, if you will, controversy.

Also pending before the Court of Appeals below, No. 74-2530 therein, oral argument having already been had, is an appeal from another order by the District Court (384 F.Supp. 846) finding petitioners herein to have been in contempt of court for having appointed the assistant superintendents and the director of elementary curriculum without complying with the procedure therefor set out in the Pasadena Plan. *See* discussion of this matter, *supra*, page 20. In the proceeding, the trial court ordered the Board to undo its segregatory action. The contempt proceedings were likewise brought by presently attending students of the Pasadena Schools and their father.

Similarly demonstrating the viability of the controversy is the vigorous protest the students made to the Pasadena Board in regard to the Board's presenting its alternative plan (Appx. 308) to the trial court to modify the Pasadena Plan.[29]

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[29]Typical is this statement by one student to the Board (Appx. 308) that "he had seen this sort of plan before and believed it was doomed to fail because it would result in Black mini schools in White areas and White mini schools in Black areas....that students had been working for the

Accordingly, the controversy is a live and vigorous one. Petitioners have not shown otherwise.

Moreover, this is a true class action; it was and is so considered by everyone. It can be nothing else. This is a school desegregation case in which an entire de jure school system was ordered desegregated. No one person or persons were ordered admitted to any particular school. *Cf.* Brown v. Board of Education (1955), 349 U.S. 294 at 301. The entire system was ordered changed. "By definition, discrimination on the basis of race or national origin is a class wrong." Rodriguez v. East Texas Motor Freight, 505 F.2d 40, 50 (CA 5 1974). Until true desegregation has indeed been achieved, "the constant existence of a class of persons suffering the deprivation is certain." Gerstein v. Pugh (1975), 420 U.S. 103, 110, fn. 11. This is

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Pasadena Plan for the past 3½ years and they will not be segregated." Another student told the Board (*ibid.*): "when he looked at the Plan a few hours ago, he thought it was a nice idea, but it was bad because in no way would parents living in the Willard area send their children to Lincoln and again, there would be segregated schools, and the students had a right to attend integrated schools."

precisely the kind of case that falls within the "capable of repetition yet evading review" principle. Moore v. Ogilvie (1969), 394 U.S. 814, 816; Storer v. Brown (1974), 415 U.S. 724, 737, n. 8; Sosna v. Iowa (1975), 419 U.S. 393, 402.

The mere absence of the verbalization of the words prescribed by Rule 23 cannot change the picture. In the first place, there is nothing jurisdictional about the pronouncement requirement of Rule 23. It is a rule of court, and as such, may be waived. Toglianetti v. United States (1969), 394 U.S. 316, n. 1. And, while, of course, the rules should be adhered to and followed, "it is always in the power of the court to suspend its own rules, or to except a particular case from its operation, whenever the purposes of justice require it." United States v. Breitling (1858), 20 How. (U.S.) 252, 15 L.ed. 900, 902. If need be, the interests of justice require it here. No purpose would be served by requiring the recitation of the words.

But the Court need not be concerned about that problem because this case was

treated by everyone, as it is, as a class action encompassing tne desegregation of the entire Pasadena School System. A brief history will demonstrate.

The original action started out as a class action brought by students and their parents "to desegregate the three public high schools in Pasadena, California, and was brought on behalf of the plaintiffs 'and of all similarly situated students enrolled in one of the three high schools.'" Spangler v. United States, 415 F.2d 1242, 1243 (CA 9 1969). The United States intervened under 42 U.S.C. 2000h-2 and "brought into the case the entire Pasadena School System," praying for "an injunction, enjoining the [school board members] from discrimination on the basis of race in the operation of the Pasadena School district." (*ibid.*) Upon motion, the trial court struck the allegations in the complaint in intervention concerning the elementary, junior high schools and special schools *(ibid.)*, thus leavings the case as involving only the high schools. The Government appealed and the Court of Appeals reversed,

ordering that the complaint in intervention be maintained as filed. (*Ibid.* at 1246.) This, because of the obligation of the Board "to achieve and maintain a unitary, non-racial system of education." (*Ibid.*) And that, of course, is how the case was tried. (Appx. 137-145, 174-180, 181-182, 196, 201-208, 219-220, 223-224, 225-227, 230-231.)

And so it is not surprising that in its findings of fact and conclusions of law at the end of the trial in 1970, the trial court said that there was "segregation in the student bodies and faculties of the Pasadena Unified School District at all levels, elementary schools, junior high schools, and senior high schools" (Appx. 97) and "time is of the essence in vindicating the right of *Pasadena's children* to obtain equal educational opportunities." 311 F.Supp. at 504 (emphasis added).

Similarly, on the appeal by other parents who were dissatisfied with the trial court's order requiring the desegregation of Pasadena schools and who had sought to intervene for the purpose of appealing it, the Court of Appeals said (427 F.2d 1352):

"The plaintiffs below are school children. Their suit is *a class action* brought to compel integration of the Pasadena schools ...." (Emphasis added.)

In their defense against the contempt proceeding referred to above, petitioners here resisted on the ground that "where, as here, representation of the class is adequate and compatible with the interest of the entire class, no individual member of the class may appear *in propria persona* to vindicate an alleged violation of class rights." 384 F.Supp. at 848 (underlining ours). Thus petitioners are in no position to complain because a *haec verba* recital that the action shall be maintained as a class action was not made.

And finally, the court below in this proceeding pointed out (519 F.2d at 430-31) that "this action was originally instituted on August 28, 1968, by certain Pasadena public school children and their parents as a class action against the Pasadena City Board of Education of the Pasadena Unified School District and certain officials

thereof, seeking injunctive relief from alleged unconstitutional segregation of its public schools. The United States Government, also endeavoring to eliminate the discrimination, was permitted to intervene as a party plaintiff on December 4, 1968. On January 23, 1970, after a nine-day trial, the District Court entered its Decree, enjoining the Board and the Superintendent of Schools 'from discriminating on the basis of race in the operation of the Pasadena Unified School District.'" (Emphasis added.)

It can not really be said, therefore, that the determination called for by Rule 23 was not made.[30] But even if, somehow, it can be said that the determination was not made and is still required, that does not make the matter moot. It will be recalled

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[30] *See* Bing v. Roadway Express, Inc., 485 F. 2d 441, 447 (CA 5 1973): "The parties and the court believed that this was a class action. No objection was registered below. To say that this is not a class action would be to ignore the substance of the proceedings below in favor of an excessively formalistic adherence to the Federal Rules of Civil Procedure. We believe the trial court's implicit determination of the class action question satisfies Rule 23(c)(1)." *Accord:* Guerra v. Manchester Terminal Corp., 498 F.2d 641, 646 (CA 5 1974), fn. 4.

that in entering its judgment, the trial court, as the decisions of this Court say it should, Brown v. Board of Education (1955), 349 U.S. 294, 301; Raney v. Board of Education, *supra*, 391 U.S. at 449, "retained jurisdiction of this cause in order to continue to observe and evaluate the plans and the execution of the plans of the Pasadena Unified School District in regard to the hiring, promotion, and assignment of professional staff members, the construction and location of facilities, and the assignment of students." 311 F. Supp. at 505. To require the court to retain jurisdiction but not permit it to exercise it, would be a *non sequitur*. Because the court retained jurisdiction, there is not even yet a final judgment. This being the case, under the rule of flexibility which must be accorded Rule 23, the specific order can still be made. Jiminez v. Weinberger, 523 F.2d 689, 702 (CA 7 1975). Couple this with the fact that new named parties may be substituted in a class action even after the original named parties have long since departed, Rogers v. Paul (1965), 382 U.S. 198, 199, there is no basis for an argument that the case is moot.

Petitioners' reliance (Pet. Br. 24) on The Board of School Commissioners of the City of Indianapolis v. Jacobs (1975), 420 U.S. 128, is misplaced. That case was brought by six high school students involved in the publication of a student newspaper seeking an order, inter alia, enjoining the school authorities "from continuing to suppress and prohibit the distribution of the *Corn Cob Curtain*." Jacobs v. Bd. of Sch. Commissioners, 349 F.Supp. 605, 607. When they got that order, that was all they were entitled to. It was their right to free speech that was involved. Moreover, there was nothing in the record in Jacobs indicating that any other students planned to continue publication of the *Corn Cob Curtain* or any other underground paper, so there was no substantial likelihood that the problem would arise in the future. This is a far cry from a case--the instant one--which seeks to desegregate an entire school system in which it is obvious that the other students will continue to be subject to the deprivation of their constitutional rights irrespective of the graduation of the individual named plaintiffs.

That Jacobs is not as all-encompassing as petitioners would have it is seen from two Court of Appeals cases decided subsequent to it.

In Jimenez, *supra*, 523 F.2d at 697, fn. 14, the Seventh Circuit said:

> "We do not imply approval of the district court's failure to certify the class. That failure, like the inadequate compliance with Rule 23 in [Jacobs] created an unnecessary risk of mootness. Since there has never been any doubt in this proceeding about the existence of a live controversy between the real adversaries, the Jacobs problem is not presented here."

And in Cruz v. Hauck, 515 F.2d 322, 325, fn. 1 (1975), the Fifth Circuit said:

> "Cruz has been discharged and the record seems to indicate that the other individual plaintiffs are no longer confined in the Bexar County Jail. We have been unable to find any verification of this proceeding as a class action. The parties, however, have treated the litigation as though the district court made an appropriate certification. The defendants have not raised the issue of mootness and since the legal issues presented continue to affect the prisoners in jail, contrary to the situation in Board of School Commissioners v. Jacobs,... a case or controversy exists with respect to the validity of the rules at issue."

So, here. "Only permanent--demonstrably permanent--desegregation of the Schools would render this case moot." Singleton v. Board of Commissioners of State Institutions, 356 F.2d 771 (CA 5 1966). That stage--desegregation--has not yet been reached in Pasadena.

Nor are petitioners on sound ground in their argument concerning the United States. In the first place it is incorrect to say, as do petitioners (Pet. Br. 25), that its function in this litigation was purely ancillary to that of plaintiffs. Without denigrating the role played by plaintiffs or engaging in a mathematical exercise as to who did what, it is apparent that it is the United States which converted this case from a high school desegregation case to a system-wide desegregation case. 415 F.2d at 1246. The very argument petitioners make (Pet. Br. 25) without citation of authority, has already been rejected. Spangler v. United States, 415 F.2d 1242. At the beginning of this litigation, when the United States sought

to expand the scope of the proceeding to include all the other schools as well as the high schools, the trial court refused to allow it. That ruling was reversed on appeal (*ibid.*). It can hardly be said, therefore, that the "United States is not an adequate substitute for a real class." (Pet. Br. 25.)

Similarly incorrect is petitioners' argument (Pet. Br. 26) that the United States fares no better on a theory that it could have instituted the action. In the first place, petitioners are simply wrong in their assertion (*ibid.*) that the United States may not under Title IX of the Civil Rights Act of 1964 file an action "except on behalf of wronged individuals who could not secure adequate counsel in some other fashion." Petitioners cite no authority for this proposition. The only restrictions on the right of the United States to intervene under 42 U.S.C. 2000h-2 are that the application be timely and that the Attorney General certify that the case is of general public interest. As put by the Court of Appeals in holding that the United States must be allowed to intervene, the under-

~~ment to intervene under Title IX was broad~~

lying policy of 42 U.S.C. 2000h-2 "is to promote the strong public interest in obtaining compliance with the equal protection clause of the constitution" (415 F.2d at 1246). That public interest did not disappear with the graduation of the named individual plaintiffs here. Moreover, the Court of Appeals, citing ample authority, specifically held that the right of the Government to intervene under Title IX was broad indeed. Spangler, 415 F.2d at 1244. Furthermore, another section of Title IX, 42 U.S.C. 2000h-3, specifically does not restrict the United States' right to institute an action and, as the Court of Appeals pointed out (415 F.2d at 1244), under another provision of the 1964 Civil Rights Act, 42 U.S.C. 2000c-6, the United States could have initiated the lawsuit and ask for the complete relief it did in its intervention complaint.

Finally, in reply to petitioners' contention (Pet. Br. 26) that the Attorney General may not bring a desegregation case to secure relief "which would provide forced busing to effect racial balance,"

as the trial court, even before this Court's decision in 1971 in North Carolina Board of Education v. Swann, 402 U.S. 43, so correctly answered (Appx. 132):

> "That provision of 42 U.S.C. Sec. 2000c-6 relating to the power of courts and officials to require transportation of pupils to overcome racial imbalance in public schools must be construed to relate to so-called de facto or adventitious segregation. It is inapplicable in this case where the existing segregation of pupils and teachers is inseparable from the discriminatory practices and policies of the defendants. *United States* v. *Jefferson County Board of Education*, 372 F.2d 836, 878-86 (C.A. 5, 1966); *United States* v. *School District 151*, 404 F.2d 1125, 1130-32 (C.A. 7, 1968)."

This is quite in harmony with what this Court said in North Carolina Board v. Swann, 402 U.S. at 46:

> "...the flat prohibition against assignment of students for the purpose of creating a racial balance must inevitably conflict with the duty of school authorities to disestablish dual school systems."

The cause, therefore, is not moot.

CONCLUSION

The judgment should be affirmed.

Respectfully submitted,

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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-164

PASADENA CITY BOARD OF EDUCATION, ET AL.,
Petitioners,

vs.

NANCY ANNE SPANGLER, ET AL.,
Respondents,

and

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-164.

PASADENA CITY BOARD OF EDUCATION, ET AL.,
Petitioners,

vs.

NANCY ANNE SPANGLER, ET AL.,
Respondents,

and

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

REPLY BRIEF FOR PETITIONERS.

In this Reply Brief we address ourselves primarily to three contentions urged by respondent United States in its main brief:[1] (1) That the need for relief has been obviated by *dicta* in the opinions of the court below; (2) that petitioner has failed to satisfy the appropriate standard for release from the active judicial supervision of the district court; and (3) that the district court's rejection of petitioner's proposed modification of the Pasadena Plan was a proper exercise of its discretion.

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1. To the extent that points urged by the individual respondents (herein, Spangler Br.) require additional reply, they are dealt with at the appropriate points in this reply brief.

We submit that far from demonstrating the absence of a need for corrective action by this Court, the concessions made and principles acknowledged in the Government's brief make it plain that reversal is required. We further submit that if the active supervision of the district court is not terminated, the case clearly calls for guidance from this Court as to the principles to be observed by the district court in any further proceedings.

I.

THE COURT OF APPEALS DID NOT GRANT THE REQUIRED RELIEF FROM THE RACIAL-BALANCE REQUIREMENT.

Petitioner's motion to the district court requested termination of the requirement that there be no school in the District with a majority of any minority students. App. 232-33. The district court denied that relief and declined to modify its injunction. App. 459. Moreover, the district court made clear in the course of the proceedings that it viewed the injunction (1) as having permanent effect and (2) as requiring annual reassignment of pupils to the extent necessary to maintain compliance. App. 270. The court of appeals affirmed the judgment of the district court without modification. 519 F. 2d 430, 440, Pet. f Cert. A14.

The United States now concedes that the requirement of continuing racial balance in all schools is insupportable. Govt. Br. 28, 37-38. It suggests, however, that petitioner's request for relief is superfluous because of statements in the opinions of the court of appeals that "disapproved" the racial-balancing requirement. Govt. Br. 28, 37. That suggestion is incorrect. The statements made by the court of appeals have not eliminated the issue.

(a) Whatever the significance of the views announced in *dicta* in the several opinions of the court of appeals, petitioner has received no relief from the no-majority-of-a-minority requirement. For reasons set forth in our main brief, and apparently not disputed by the Government, the Pasadena School Board should no longer be subject to that requirement, whether or not the requirement was originally valid. The requirement has now been in force for six school years (including the present one). The racial balance of the pupil population in the Pasadena school district makes the requirement virtually a fixed quota for every school. Even without the need for continuous annual reassignment of pupils (an obligation that has not been negated by any action of the court below) the existence of the requirement seriously impedes other measures designed by the school board to achieve a stable integrated school system and improve educational opportunities for all children. See *infra* at pp. 15-17.

(b) The *dicta* in the opinions below do not clearly resolve the status of the racial-balancing requirement. Judge Ely's opinion merely suggested that at some point "continuous annual redistricting" to correct "*de minimis* alterations in racial balance in specific schools" would no longer be appropriate. 519 F. 2d at 437-38, Pet. for Cert. A11. Judge Chambers "interpreted" that suggestion to require termination of "the mandatory injunction" within a "very short time" and suggested he could "go along" only with one more required reassignment. 519 F. 2d at 440, Pet. for Cert. A21-22. Judge Wallace, dissenting, did not directly address this issue because he would have remanded for a proper determination of the question whether jurisdiction should be terminated altogether. But he correctly noted that Judge Ely's opinion does not support the interpretation Judge Chambers gave it, stating: "Judge Ely apparently would enforce the 'no majority of any minority' provision of the injunction indefinitely but would allow de minimis deviations after de jure segregation has been eliminated. Judge Chambers apparently would abandon the injunction entirely once de jure segregation has been abolished." 519 F. 2d at 445, n. 8. (Judge Wallace also correctly noted that the *Swann* decision "requires that racial quotas be flexibly interpreted even before de jure segregation has been eliminated." *Id.* at 445.)

(c) On October 8, 1975, more than five months after the decision of the court of appeals, the district court entered a further order, enjoining the creation of an additional "fundamental" school in the Pasadena school district. That order is the subject of a stay granted by Mr. Justice Rehnquist on December 22, 1975. *Pasadena City Board of Education* v. *Spangler*, No. A-538, ... U. S. ....., 96 S. Ct. 416. The record of that proceeding shows that the district court regarded the racial-balancing injunction as being in full force as of that date and gives no suggestion of prospective elimination of the requirement. (Aud. Tr., Sept. 15, 1975, e.g., 53-54, 117, 134.)[2]

There is thus a clear need for action by this Court to relieve petitioners of the continuing operation of the requirement of strict racial balance in every school.

II.

UNDER THE STANDARDS ACKNOWLEDGED BY THE GOVERNMENT, PETITIONER IS ENTITLED TO RELEASE FROM REGULATORY JURISDICTION.

The Government recognizes that in school desegregation cases it is appropriate to terminate active judicial supervision when a school district has achieved "unitary" status. Nevertheless it suggests that the Pasadena school district has not yet qualified for such release under the "evolving standards" for termination. We submit that the very examples cited by the Government show that the Pasadena system does qualify. The standard proposed by the Government in the "illustrative memoranda" referred to in the Government's brief (p. 57) is as follows:

> "We would suggest . . . that a school district which has achieved and maintained unitariness over a period of three school years and has not been found to have engaged in racial discrimination during that period will have remedied (to the extent they are remediable) the effects of past discrimination."[3]

2. The record of that proceeding (known as the Audubon School hearing), which has been quoted in the Government's brief (Govt. Br. 13), has been lodged with the Clerk. References to it hereinafter are cited "Aud. Tr."

The same standard has been followed in each of the Fifth Circuit cases referred to at pp. 56-57 of the Government's brief and in the illustrative orders set forth in the Appendix to that brief.

The Pasadena school board had been in substantial compliance with the district court's desegregation decree for a period of four school years at the time the district court denied petitioner's request for relief. At the present date it has been in such compliance for a period of six school years. It has not been found to have engaged in racial discrimination at any time during that period. It has not been found to have engaged in any of the actions against which the original decree was directed.

Thus there is fully as much warrant as appears in the examples cited by the Government for concluding that the Pasadena school district has "remedied to the extent that they are remediable" the effects of past discrimination. None of the reasons advanced by respondents for repudiating that standard in this case are substantial or persuasive.

1. The Government directs superfluous argument against what it calls the "instant unitariness" theory. This is mere word play. Petitioner has not contended, and obviously need not contend, that it was entitled to be relieved of judicial supervision the moment the desegregation plan was put into effect.

The point is that the reorganization of the school system pursuant to the decree did, as of that time, render the system a "unitary" system in precisely the same sense as that term is used in the orders relieving school districts in the Fifth Circuit from active supervision. Compliance with the decree commenced the running of the period for determining release. Each of the orders set forth in the Appendix to the Government brief recites that

3. *E.g.*, Response of the United States, *United States* v. *County School Board of Sussex County* (E. D. Va. No. 6060-R), p. 3.

the schools "have been operating a *unitary system* for the past three years" (emphasis supplied). The orders clearly import that the three-year period dates from the time the desegregation plan was put into effect. (See, e.g. *Ridley* v. *Georgia*, Govt. Br. 164, where the order recites that specified districts "have for three years assigned students to the public schools in accordance with the plans approved by the Northern District and have become 'unitary' in the sense required by the Supreme Court's decisions in *Green* v. *County School Board*, 391 U. S. 430 (1968) and *Swann* v. *Board of Education*, 402 U. S. 1 (1971).")[4]

In sum, the "evolving standard" has been that when a school district has been operated for three years or more in accordance with an order achieving desegregation it is appropriately relieved of active judicial supervision, whether the term "unitary" denotes its condition at the beginning or at the end of that process. The Pasadena district has more than satisfied those conditions.

2. The respondents appear to suggest, alternatively, that the school district will not have met its burden until it can demonstrate that every vestige or effect of past discrimination has been eradicated. No such burden has been suggested, or declared to have been met, in the examples cited in which supervision has been terminated. Speculation about "lingering effects" of past discrimination is possible in every case. If speculation rather than facts were the test, it would be far more difficult to suppose that lingering effects of a hundred years of state-compelled dual school systems in the South have been wholly dispelled by three years of integrated schools than that the effects of past practices like the ones found in this case have been neutralized. To demonstrate the absence of such effects is a burden that could never be met.

4. See also Response of the United States, *U. S.* v. *County School Board of Sussex County*, *supra* n. 3, suggesting that jurisdiction should be dismissed altogether after a total period of ten years, *"three under the regulatory injunction* and seven under the permanent injunction". Response, p. 5, n. 4 (emphasis supplied).

Neither the district court nor the respondents here have pointed to a single specific example of how any of the "actions and inactions" on which the district court's 1970 order was based (Findings of Fact, App. 100-133) can have any present tendency to perpetuate segregation. The complete reshuffling of attendance zones under the Pasadena Plan has necessarily obliterated any effects of past pupil assignments, as well as of past transfer policies. The few instances of discriminatory siting and school-capacity decisions found by the district court (App. 119-123) have likewise been rendered irrelevant by the radical alteration of attendance zones, as well as by demographic changes and changes in the use of school buildings. There is no evidence that the school board has discriminated in the appointment and assignment of its teaching and administrative staffs.[5] As to residential segregation, although the district court in its original findings recited that the school board was "aware of the existence of residential segregation and the discrimination that underlies it" (Finding 26, App. 111), there was understandably no finding that the board had caused residential segregation, or even contributed to it. The continued existence of racial residential patterns can hardly be ground for continued jurisdiction over the Pasadena school system.

There is, in short, a complete lack of any basis for imposing on the Pasadena board a burden of demonstrating the absence of "vestiges" of past practices having segregatory effects, even if the burden of proving such a negative would ever be an appropriate test for relinquishing judicial supervision.

3. The suggestion of the United States that petitioner's compliance with the desegregation order "has been grudging at best" (Govt. Br. 57) is without support in the record. It is also incon-

5. The individual respondents in their brief in this Court misleadingly use the present tense in reciting facts about assignment of teachers and staff. (Spangler Br. 8-10.) Each of the cited references to the record at those pages of their brief are to the findings of fact which accompanied the district court's 1970 order, not to evidence in the proceeding that is here under review.

sistent with the proposition simultaneously asserted by the Government that the order "has succeeded as an instrument of desegregation" (Govt. Br. 16) and "has not been unsuccessful educationally" (*id.* 61). What the record actually shows is that the school board has diligently carried out the desegregation order while at the same time undertaking innovative measures, with considerable success, to achieve educational progress, promote voluntary integration, and stabilize the racial composition of the district. The board's failure to convince the district court that the court-ordered plan was in fact detrimental to the full realization of those objectives is no evidence of lack of compliance or of "grudging compliance."

The district court cited no instance of lack of compliance by the school board with its order, with one exception. That exception was the fact that during the four years of the Plan's operation demographic changes had caused five schools to exceed 50% black enrollment by small percentages. (375 F. Supp. 1304, 1306, App. 454; for the percentages, see dissenting opinion of Judge Wallace below, 519 F. 2d at 443, Cert. Pet. A26.) It is conceded that these "violations" were unintentional and were due to the fact that none of the parties had understood the decree as requiring annual redistricting to eliminate minor variations from the no-majority-of-a-minority requirement. Stipulation, App. 268; Govt. Br. p. 16, n. 22. After the trial judge announced his interpretation of the decree during the course of the present proceedings (App. 270), the school board has redistricted annually in compliance with that interpretation. (See Aud. Tr. 116, 224-25.) These circumstances afford no basis for finding resistance to the court's decree or "grudging" compliance with it.[6]

6. Nor can any such basis properly be found in the board's action in making five temporary appointments without following the detailed personnel procedures prescribed by the Pasadena Plan for permanent appointments. (See Govt. Br. pp. 18, 57; Spangler Br. 19-20.) The district court itself made no reference to

(Continued on next page.

4. In defending the district court's action, the Government's brief fails to address what was plainly the primary basis for that action, namely, that the school board (and the voters who elected them) had expressed strong opposition to the Pasadena Plan. That is the sole basis appearing in the record for the district court's statement that "the Pasadena Plan has not had . . . cooperation from the Board." 375 F. Supp. 1304, 1308; App. 458.[7] So far as cooperation by the Board is concerned, nothing in the record qualifies or refutes the position clearly stated when the first version of a revised plan was proposed to the board by board member Marcheschi on October 26, 1971:

> Let me make it unquestionably clear that under no circumstances do I favor "defiance" of the present Court mandate. Whether we agree or disagree with the Pasadena Plan and the decision of Judge Real, respect of law and

the matter in its opinion denying relief. Indeed, when the matter had come up during the course of the trial on the petition for relief, the court stated that although he was of the opinion that the personnel procedures covered "all administrators" (contrary to the board's understanding that acting or temporary appointments were not covered) he would not find on the evidence before him that the board had acted in bad faith. (Tr. 700.)

The ensuing contempt proceedings adverted to by the Government (Govt. Br. 18, n. 23) show the difficulty of compliance with the district court's evolving interpretations. As soon as the district court's interpretation of the personnel procedures was announced during the course of the hearing on the petition for modification, the school board promptly proceeded to advertise for, recruit, and select permanent candidates for the five disputed positions in accordance with the personnel procedures of the Plan. See 384 F. Supp. 846, 851. The disputed issue in the contempt proceedings was simply whether the board was required not merely to make reappointments but, pending those reappointments, to *vacate* the existing temporary appointments. The latter requirement, however, was not made clear until the very decision in which the contempt order was issued, as sufficiently appears from the opinion itself.

7. The district court subsequently made its position crystal clear. It stated that "a majority of the Board's expressed opposition to the Pasadena Plan" precluded finding "any element of good faith" in connection with the personnel dispute, citing the court's previous opinion in the relief proceedings. 384 F. Supp. 846, 850.

social order is paramount to all other considerations for such is the heart and soul of our American System.

How, then, do we implement modifications of the present plan? How do we overcome the present mandate that "no school shall have a majority of a minority race"? I readily admit this restriction is not compatible to certain aspects of the New Pasadena Plan which I will set forth in Part II of this presentation.

The first step is to a majority of the Pasadena School Board to agree on such modifications and present them to the District Court for approval. In view of the radical changes in circumstances which have occurred since the decision, and especially in view of the Supreme Court decision in the *Swann* case, I have every reason to hope the District Court would look favorably on a new plan. [App. 432-33.]

As we have pointed out in our main brief (p. 19), the views expressed and the objectives sought by the school board were wholly consistent with policies advocated in the concurring opinion in *Keyes* v. *School District No. 1*, 413 U. S. 189, 244 *et seq.*, and reflected in statutes of the United States. The Board has never sought to achieve its objectives except by proper legal means, namely, the bringing of the very petition that is the subject of this review.

It would be ironic, indeed, if the expression of such views, and the pursuit of legal remedies, were allowed to be the basis for finding "lack of cooperation" and denying the relief to which the Board is otherwise entitled.

5. Nor can it be a proper objection to termination of regulatory jurisdiction that plans contemplated by a school board may result in racial imbalance in individual schools, or in racial composition of schools different from that resulting from the court-ordered plan of pupil assignment. The Government concedes as much. (Govt. Br. 47, n. 38, 58: "The extent of racial balance resulting from a judicial decree may often change after a decree is lifted.") Thus, even if the district court's speculation were correct that the Board's proposed new plan might result

in a number of schools with over 60% black enrollment (App. 455-500)—a conjecture that is unsupported by evidence—that possibility cannot of itself be a valid reason for refusing to lift the regulatory decree.

The Government appears to suggest, however, that the announced intention of a school board to modify an existing plan if the regulatory injunction were lifted is itself a reason for refusing that relief. (Govt. Br. 48, 50, 58 2A.) That, too, would be perverse and self-contradictory. It cannot be an objection to termination of jurisdiction that the school district will or may alter the plan previously ordered by the court. If that were so there would be no purpose in terminating regulatory supervision. The orders set forth by the Government in its Appendix contain no suggestion that they are conditioned on the continuance of the very plans previously enforced by judicial decree; if they were, no purpose would be served by substituting their general prohibitory injunctions for the previous detailed regulatory injunctions. The very purpose of relief from regulatory orders is to permit local authorities to resume full control over the education of the school children for whom they are responsible, subject to compliance with constitutional requirements.

For the foregoing reasons, we believe it clear that the petitioners were entitled to an order terminating the active supervision of the district court. Even if that is not true, however, it is abundantly clear that the district court failed to consider the issue under proper legal standards. In effect, the district court did not consider the question at all. The only reasons given for denying relief from the injunction were the reasons relied on by the court for rejecting the proposed alternative plan. The court stated merely that modification of the injunction would "leave the Board to its own devices" and would be "to sign the death warrant" of the court-ordered plan. (App. 459.) At a minimum, therefore, reversal is required, with directions to the district court to apply correct legal standards to petitioner's request for relief from active supervision.

III.

THE DISTRICT COURT'S REJECTION OF THE ALTERNATIVE PLAN WAS AN ABUSE OF DISCRETION.

The Government seeks to uphold the district court's action rejecting petitioner's Alternative Plan by reference to "the wide range of discretion in the District Court to mould [a] decree to the exigencies of the particular case." (Govt. Br. 58-59.) The question, however, is not whether the district court has wide discretion but whether it exercised its discretion according to proper legal standards and whether it did, in fact, "mould its decree according to the exigencies" of the problem with which it was confronted.

We submit that the reasons advanced by the courts below and by respondents cannot support rejection of the school board's proposals, and that the district court's approach represents a serious departure from that sensitive "reconciliation of competing values in a desegregation case" which this Court has assumed a court of equity will undertake. *Swann* v. *Board of Education*, 402 U. S. 1, 31.

1. Significantly, the Government does not attempt to justify the district court's primary rationale for rejection, namely, that the Alternative Plan would not "*guarantee* that no school in a once-segregated school district shall be permitted to have an enrollment with a majority of any minority." 375 F. Supp. 1304, 1307; App. 456 (emphasis supplied.) That objection to the Plan was ruled out by *Swann*: "[I]t should be clear that the existence of some small number of one-race, or virtually one-race, schools within a district is not in and of itself the mark of a system that still practices segregation by law." 402 U. S. 1, 26. The district court's mistaken premise on this point was so fundamental to its judgment as to constitute in itself sufficient ground for reversal.

2. To support the action of the district court the Government relies mainly (as did Judge Ely in the court below) on previous decisions of this Court disapproving "freedom-of-choice" plans where such plans were proposed as the initial and exclusive means for converting dual school systems into unitary systems. (Govt. Br. 59-60.)[8] That reliance is improper. The *Green* and *Monroe* decisions[9] are not controlling.

There is a vast difference between the use of freedom of choice as the only remedy for undoing the effects of a completely dual school system, at the outset of desegregation, and introducing elements of freedom of choice into a school system that has operated for four (now six) years under a rigid racial-balancing, compulsory-busing decree. If compulsory integration of schools can have an effect upon the attitudes and expectations of children, parents, and school authorities—if the whole history of enforcement since *Brown* v. *Board of Education* is not to be dismissed as futile—it must be assumed that the education of an entire elementary-school generation in a completely integrated environment has significantly altered the "choices" that might once have been made, making "freedom of choice" not an empty phrase but a reality. If that assumption (which can never be demonstrated until it is tested) is not valid now, there is little reason to hope that it will be valid after an additional four or six years of compulsion.

Unless compulsion is the permanent and only answer to the achievement of an integrated society, there must come a point at

8. The Government brief (p. 58) inaccurately states that "the court below" decided that rejection of the Alternative Plan was proper. Only Judge Ely addressed the question. Judge Chambers specifically stated that he did "not reach the merits of any other plan." Judge Wallace concluded that the district court's entire order was fatally defective because of the fundamental error referred to above. 519 F. 2d 430, 438, 440, 441 *et seq.*; Pet. for Cert. A12, A21, A23.

9. *Green* v. *County School Board of Kent County*, 391 U. S. 430 (1968); *Monroe* v. *Board of Commissioners*, 391 U. S. 450 (1968).

which voluntarism is to be encouraged, not wholly forbidden. The problem of this case, which is the long-range problem of school systems throughout the country, cannot wisely be resolved merely by the citation of the *Green* and *Monroe* cases.

3. The Government, like the district court, invokes a false analogy in characterizing the board's proposals as a "freedom of choice plan", *simpliciter*, and in suggesting that the plan "is nothing more than a proposal to return to schools mirroring the racial image of the surrounding area." (Govt. Br. 63.)

That characterization disregards numerous relevant aspects of the proposed Alternative Plan: (a) The board proposed no changes in the provisions of the Pasadena Plan relating to junior and senior high schools. (App. 463.) (b) The plan did not propose the creation of attendance areas for particular schools and thus in no way fostered the re-emergence of the attendance pattern that had been found to be segregated prior to 1970. (App. 462.) There was no possibility of pupils simply returning to their "old" (i.e. pre-1970) schools. (c) Instead, the inertia of the system—i.e. the tendency of pupils to continue in the same schools—would be entirely on the side of the integrated pattern already in force for four years. (d) The attendance pattern would adjust itself within defined zones of balanced racial composition. (App. 462.) (e) The plan emphasized positive measures to encourage voluntary integration by creating significant educational distinctions among the schools within each zone (App. 460-62.) (f) The proposal for differentiated schools was based on actual and successful experience of the school board in promoting voluntary integration in specialized schools. (App. 462, 496, 525, 528, 356-73; see *infra*, pp. 15-17.) (g) The plan proposed back-up remedial measures in the event that any school's ethnic profile "should deviate significantly from the District-wide ethnic profile." (App. 462.)[10]

10. Whether the part-time pairing contemplated by the back-up measure was "an acceptable substitute for desegregation" must be

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In the light of these facts, it is apparent that the district court's rejection of the plan, to the extent that it did not rest solely on the judge's fixed purpose to enforce indefinitely a plan of compulsory racial balance in every school, resulted from improperly treating "freedom-of-choice" as a code word that automatically condemns any plan with elements of voluntariness. That approach should be rejected by this Court.

4. The district court gave little, if any, weight to the educational advantages of the school board's proposals (375 F. Supp. 1304, 1308; App. 457) and no weight to the board's judgment, based on its experience, that the proposals would succeed—indeed, he dismissed that judgment almost contemptuously. *(Ibid.)* While intimating that the quality of education is secondary in importance to the requirement of compulsory racial balance, he maintained that the educational opportunities of the existing plan were equal or superior to those of the board's plan, and that the board's objectives could be implemented under the existing plan.

Subsequent evidence discredits the court's opinions and confirms those of the board. We refer to the evidence and the result in the Audubon School controversy, wherein the district court has enjoined the board from instituting a "fundamental school" program in a predominantly black section of Pasadena. Order of October 8, 1975, stay granted by Mr. Justice Rehnquist, *Pasadena City Bd. of Ed.* v. *Spangler*, ... U. S. ....., 92 S. Ct. 416 (Dec. 22, 1975). Inexplicably, the Government's brief relies on testimony from that proceeding as supporting the district court's rejection of the Alternative Plan. (Govt. Br. 15.) What is actually shown by that testimony, and by the proceed-

judged, of course, in the light of the plan as a whole, not as if it stood by itself. See Govt. Br. 63, n. 48. Presumably the district court could have directed attention to its possible inadequacy had he deemed that question material. Any doubts the court entertained as to this detail of the plan could hardly have justified rejecting the entire plan out of hand. The district court made no reference to the pairing proposal in his opinion rejecting the Alternative Plan.

ing as a whole, is the solid merit of the board's proposals and the obstacles to their implementation created by the existing decree.

Prior to its petition for modification, the school board had experimented with several special or "magnet" schools with different educational approaches. "Alternative" schools featured an unstructured type of teaching; "fundamental" schools emphasized a rigorous approach to the teaching of basic skills. (Aud. Tr. 63-64.) Attendance at the schools was made voluntary and was open to all students in the district, subject to the requirement that the racial balance required under the decree be maintained. (Aud. Tr. 217-18.) These schools, therefore, represent a concrete demonstration that voluntary integration can be accomplished in connection with an innovative approach to education.[11] The fundamental schools have also shown highly promising results in educational achievement, especially for black students, as shown by the testimony of Dr. Myers that has been emphasized by the Government. (Govt. Br. 15-16, Aud. Tr. 17-18, 33.)

In 1975, a year after the district court's rejection of the Alternative Plan, the school board decided to institute a fundamental school at the Audubon school, in the predominantly black northwest section of Pasadena, both to encourage more black students to enter the program and to locate a school nearer their homes for some of the approximately 800 black students being bused to fundamental schools in predominantly white sections. (Aud. Tr. 234-36, 256, 45-46, 58-59.) Racial balance was to be maintained. On the eve of the opening of the new school year, the district court enjoined the conversion of Audu-

11. The president of the school board testified that a large private school with several hundred students had closed and that the students had said they would return to the Pasadena school system if a fundamental high school could be made available. Accordingly, an existing K-8 fundamental school was extended to include grades K through 12. Racial balance was maintained. (Aud. Tr. 27-28.) The school board has for some time had a waiting list of more than 1,000 white applicants for the fundamental schools, who have not been accommodated because of the required racial balance. (Aud. Tr. 17-18, 32-33, 43.)

bon to the fundamental program. It ordered reassignment of all pupils to their respective previous schools.

The court's action and reasoning are difficult to understand as an exercise of the remedial powers of equity to prevent segregation. No issue of racial balance or of unequal burdens on white and black students was involved. The court's objection was grounded on the fact that some 56 students, if they elected not to attend the fundamental program, might have had to be bused to a non-neighborhood school. (Aud. Tr. 222-23, 260.) Even that burden was of the court's own making: Another nearby school would have been available to them but for the court's undeviating adherence to the strict racial-balancing requirement. (Aud. Tr. 7-8, 52-54, 223-27.) Moreover, the added burden on those students was offset by the benefit to a much larger number of black students (some portion of the 800 already attending more distant fundamental schools) whose busing would be reduced or eliminated.

The court's conclusion, if comprehensible at all, appears to represent an educational judgment hostile to the fundamental-school concept. Its order is, in any event, a serious curtailment of the school board's discretion: The board is enjoined from establishing any additional fundamental schools "until studies and analyses are completed to demonstrate that such schools will not result in violation of the Pasadena Plan and are the least disruptive choices possible." Application for Stay, Docket No. A-538, Exhibit A, *Pasadena City Bd. of Ed.* v. *Spangler*, ... U. S. ....., 96 S. Ct. 416.

We submit that the Audubon episode convincingly supports, if further reasons were necessary, each of the propositions urged in this brief. It demonstrates the good-faith devotion of the school board to the objectives of its Alternative Plan, as well as the strong potential of that plan as a means of promoting voluntary integration and more successful education. It shows that the existing decree, as interpreted by the district court, is frustrating the board's attempted progress toward these objectives. Finally, the intrusive role assumed by the district court in attempting to

interpret and monitor its decree vividly illustrates why a school district that has become unitary in a constitutional sense should be released from judicial custody at the earliest reasonable time. Only by return of the day-to-day decision-making function to the school board can educational judgments, and the necessary balancing of competing aims and interests, be made by the authorities properly charged with that delicate function.

As in *Milliken* v. *Bradley*, this case does not present issues of substantive constitutional law. "The basic issue now before the Court concerns, rather, the appropriate exercise of federal equity jurisdiction." *Milliken* v. *Bradley*, 418 U. S. 717, 753 (Stewart, *J*. concurring.) This case presents that issue in a new dimension. In *Milliken* the question was the appropriate geographic reach of the remedy. Here it is the appropriate reach of the remedy over time. The underlying principle is the same: "The controlling principle consistently expounded . . . is that the scope of the remedy is determined by the nature and extent of the violation." *Id*. at 744. We submit that the disposition of this case by the courts below cannot be reconciled with that controlling principle.

This case is a novel one in yet another respect, intimately connected with the problem of duration of judicial control. The case requires the Court for the first time to consider the objectives of equity jurisdiction, not in dismantling a segregated school system, but in returning a "dismantled" system to a state of independence compatible with the constitution and with the goals of *Brown* v. *Board of Education*. We suggest that this phase of the problem, no less than the dismantling phase, calls for the exercise of equity's "traditional attributes" of "practical flexibility in shaping its remedies and . . . a facility for adjusting and reconciling public and private needs." *Brown* v. *Board of Education*, 349 U. S. 294, 300. If equity supervision is to continue at all, that flexibility, we urge, calls for recognition of

important values—such as educational quality, neighborhood schools, freedom of parents to determine their own best interests, and local control of the school system—to a greater degree than may be possible or appropriate where the aim of relief is to "end segregation, and end it now." Again, we submit, the differing nature of the problem at this stage of a desegregation remedy finds no recognition in the district court's refusal to permit modification of the decree.

The Government intimates that this is not an appropriate case for "a reexamination of busing as a remedy." (Govt. Br. 39.) We do not suggest that it is. The issue here is not the reexamination of the remedy imposed in the past to eliminate segregation; it is the examination of the appropriate remedy for the future of the Pasadena schools. Busing is merely one of many circumstances that condition the selection of a wise path. The Government also suggests that relief is foreclosed because petitioners "failed in their proof" as to the adverse consequences of continuing the existing Plan. But such a failure to persuade the district court cannot relieve a court of equity of the duty, in shaping a remedy, to recognize the obvious relevance of the board's underlying concerns, concerns which cannot be ignored in the wise pursuit of the goal set by *Brown* v. *Board of Education*. As Mr. Justice Powell has stated (concurring in *Keyes* v. *School District No. 1*, 413 U. S. 189, 250):

> No one can estimate the extent to which dismantling neighborhood education will hasten an exodus to private schools, leaving public school systems the preserve of the disadvantaged of both races, or guess how much impetus such dismantlement gives the movement from inner city to suburb, and the further geographical separation of the races. Nor do we know to what degree this remedy may cause deterioration of community and parental support of public schools, or divert attention from the paramount goal of quality in education to a perennially divisive debate over who is to be transported where.

CONCLUSION.

For the foregoing reasons, the judgment of the lower courts should be reversed.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975.

No. 75-164

PASADENA CITY BOARD OF EDUCATION, et al.,
Petitioners,

v.

NANCY ANNE SPANGLER, et al.,
Respondents,

and

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF AMICUS CURIAE

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BRIEF OF AMICUS CURIAE

By consent of the petitioners and the respondents, the Board of Education for the City of Chattanooga, created in 1941 by a Private Act of the General Assembly of the State of Tennessee, files this brief Amicus Curiae.

INTEREST OF THE AMICUS CURIAE

The Amicus Curiae, Chattanooga Board of Education (CBE), has an interest in the Pasadena case for the reason that the Pasadena case has been cited to the United States Court of Appeals for the Sixth Circuit as the basis for staying all action upon a petition for rehearing and suggestion of re-

hearing en banc by plaintiffs-appellants in *James Jonathan Mapp, et al.* v. *The Board of Education of the City of Chattanooga, et al,* Case No. 74-2100. Said petition was originally filed on November 4, 1975,[1] and amended on November 24, 1975,[2] pursuant to the appellate court's grant of an extension of time. The petition is directed to the appellate court's opinion of October 20, 1975.[3]

Secondly, CBE understands that this Court has been advised by counsel for the Pasadena Board of Education of said opinion of October 20, 1975; and further with a suggestion that the *Mapp* decision is in conflict with the *Spangler* decision of the United States Court of Appeals for the Ninth Circuit, 519 F.2d 430 (5-5-75) in which case this Court granted certiorari on November 11, 1975, pursuant to petition of the Pasadena School Board.

CBE has been in court for fifteen years, since April 6, 1960. CBE has always complied with the United States Constitution once what the Constitution required in school desegregation cases was clarified by the district court. There is nothing in the long record of this case even to suggest to the contrary. Dual zones were terminated in September of 1966. Faculty and staff desegregation upon a voluntary basis was initiated thereafter. Subsequent to *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1, (1971), faculty and staff were racially balanced pursuant to court order. Currently elementary and junior high schools are desegregated pursuant to a plan initially approved by the district court on July 26, 1971,[4] affirmed en banc by the Sixth Circuit on April 30, 1973,[5] with

[1] Motion for rehearing or rehearing en banc and leave to file Amendment to this Motion out of Time. Appendix A.

[2] Amended Petition for Rehearing and suggestion of Rehearing En Banc. Appendix B.

[3] Opinion of 6th Circuit of 10-20-75. Appendix C.

[4] 329 F. Supp. 1374.

[5] 463 F.2d 745.

certiorari denied by this Court on November 12, 1973,[6] reaffirmed by the district court on November 16, 1973,[7] and now stands re-affirmed by the Sixth Circuit in its opinion of October 20, 1975, (as all three judges agreed as to elementary and junior highs) the opinion which plaintiffs-appellants are now seeking to have reheard.

The high school plan was approved tentatively in the decision of July 26, 1971, with such tentative approval subsequently being affirmed on appeal and by the denial of certiorari. The high school plan as implemented was given final approval by the district court on November 16, 1973, and now stands affirmed by the 2-1 decision of the Sixth Circuit on October 20, 1975.

Uncertainty as to what the United States Constitution requires in school desegregation cases continues. The current petition to rehear, and in effect, to stay the rehearing, compounds the uncertainty for the CBE. The continuation of the atmosphere of doubt, confusion, and uncertainty must necessarily diminish the quality of the educational opportunity offered each passing day within the school system, and to the detriment of all of us. And such is the essence of the Constitutional right in question.

The issues raised by Pasadena in its petition are desperately in need of clarification, an eventuality recognized by this Court in 1971, *Swann,* supra p. 14;

> "The problems encountered by the district courts and courts of appeals make plain that we should now try to amplify guidelines, *however incomplete and imperfect,* for the assistance of school authorities and courts." (emphasis added)

Too great an importance cannot be ascribed to the issues with reference to the administration of school desegregation plans by Federal Courts. Circuit Judge Chambers' reference

[6] 414 U.S. 1022.

[7] 366 F. Supp. 1257.

to the courts "grading students' papers" should not be dismissed lightly.

District and appellate courts have consistently given their attention to racial balance reflecting extreme caution before approving any slight deviation from a precise racial balance. Judge Real's commitment to no majority black schools as an ironclad, continuing requirement is classically illustrative of lower courts' rigid interpretation of the racial balance language in *Swan,* supra. Nothing could be more mechanical and inflexible in practice.

Mechanical approaches to a Constitutional remedy in the field of education are dangerous, substituting a formula for a sophisticated individual judgment. But this is the pattern.

Lower courts have tended to ignore the default portions of the *Swann* rationale, equating numerical results with compliance while excluding any consideration of practicalities and basic reality, sometimes deciding as if segregation was per se unconstitutional even if in no way attributable to official action or inaction. If the "year-by-year adjustments" portion of *Swann* is to prove administratively feasible, some clarification is essential as to what constitutes compliance. Until this issue is clarified, federal courts will continue to move toward "grading students' papers."

Freedom of choice is not per se unconstitutional. Again, the obsession with numbers causes courts to ignore the educational utility inherent in freedom of choice. In fact, this Court has impliedly approved freedom of choice in the majority the minority requirement in every desegregation plan.[8]

However, school systems differ. School boards differ. All have not reacted to *Brown I* and *II* in the same manner. This Court recognized this distinction in the frequent references to default in the *Swann* decision.[9]

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[8] *Swann,* Supra, p. 26.

[9] "Judicial authority enters only when local authority defaults." (p. 16).

"• • • that the School Board had *totally defaulted* in its acknowledged duty to come forward with an acceptable plan of its own. • • • It

CBE is fearful that the Pasadena decision may well decide the Chattanooga case, or that the district court or the Sixth Circuit will so interpret the Pasadena decision although the history of the two cases reflects many and essential differences. Obviously the plaintiffs believe such eventuality is possible and to their liking. But would Chattanooga have ever been given the opportunity to have these evolving Constitutional principles interpreted in the light of the Chattanooga facts, uninfluenced by the actions of a school board in a community on the other side of the country? Favorable actions upon a petition by a school board for certiorari is infrequent. Hence CBE feels constrained to call the Chattanooga facts to the attention of this Court in this case.

STATEMENT OF FACTS

The Chattanooga suit was initially filed on April 6, 1960, by James R. Mapp as father and next friend of James Jonathan Mapp and Deborah L'Tanya Mapp, minors, and others on their own behalf and on behalf of all other Negro children and their parents in the City of Chattanooga who were similarly situated and affected by the policy practice, custom, and usage complained of. An injunction was requested against the operation of a compulsory bi-racial school system through the maintenance of a dual pattern of school zone lines based upon race and color, and against the assignment of pupils to schools on the

---

was because of this *total failure* of the school board that the District Court was obliged to turn to other qualified sources • • •." (Emphasis ours) (p. 24).

"In seeking to define even in broad and general terms how far this remedial power extends it is important to remember that judicial powers may be exercised *only* on the basis of a constitutional violation. Remedial judicial authority does not put judges automatically in the shoes of school authorities whose powers are plenary. Judicial authority enters *only* when local authority defaults." (Emphasis ours) (p. 16).

"• • • to review important issues as to the duties of school authorities and *the scope of powers of federal courts* under this Court's mandates to eliminate racially separate public schools established and maintained by state action." (Emphasis ours) (p. 5).

basis of the race and color of the pupils. In the alternative, plaintiffs requested that CBE present a plan for reorganization of the system into a unitary non-racial school system providing for assignment of children on a non-racial basis.

The suit was filed under authority of 28 U.S.C. 1983 and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

CBE admitted the operation of a bi-racial school system and submitted that it had been, and was then, conducting a program of "elucidation" to prepare the community of Chattanooga for the initiation and carrying out of, and acceptance of, the student desegregation commanded by the *Brown* decision.

CBE represented that further time was needed to continue the elucidation responsibility so that student desegregation might have a reasonable chance of success with minimum harm to the quality of the educational opportunity as more of the community came to accept the requirements of the constitution.

On October 21, 1960, the district court granted the plaintiffs' motion for summary judgment and directed CBE to submit a plan of desegregation, and it was filed on December 20, 1960. This plan was disapproved and the Board was given sixty days within which to submit another plan. The Circuit Court of Appeals sustained the district court's order, 295 F.2d 617 (1961).

A hearing was held on February 1 and 2, 1962, after which the district court approved the desegregation plan in part. Said plan was gradual and involved the desegregation of sixteen selected elementary schools in September of 1962 in grades 1, 2 and 3, followed by desegregation of all four grades of all elementary schools in September of 1963 and the remaining elementary grades in 1964. The Plan proposed to desegregate the first year of junior high in 1965, the remaining junior high grades in 1966, first year senior high in 1967, the remaining high school grades in 1968 and the Chattanooga Technical Institute in 1969.

An appeal was taken by both parties. The gradual plan was approved upon appeal with the exception of technical and vocational courses and the case was remanded for further proceedings with respect to them. 319 F.2d 571 (1963).

Under date March 29, 1965, the plaintiffs filed a Motion for Further Relief seeking acceleration of desegregation so that complete desegregation would be effected by September 1965 and for teacher and pupil assignments to be made "without regard to race" and that all racial classifications be eliminated from the operation of the public school system. The district court granted the accelerated relief requested, requiring the complete elimination of dual zones in all grades by September 1966. The Court denied relief on the issue concerning faculty desegregation.

The court of appeals affirmed[10] the judgment of the district court with the exception of the issue of faculty assignments as *Bradley* v. *School Board of City of Richmond*, 382 U.S. 103 (1965), had been decided since the district court decision was filed.

PROCEEDINGS SUBSEQUENT TO 2/27/1967 ORDER OF THE COURT OF APPEALS AND PRIOR TO 1971

On March 29, 1967 the district court entered an order finding that the single question left for decision was faculty assignment. On September 12, 1967 CBE proposed an offer of judgment regarding the faculty issue. Such was neither accepted nor rejected by plaintiffs.

On November 23, 1970 plaintiffs filed a Motion for Summary Judgment contending that the desegregation plan had proven ineffective to accomplish its purpose, that is the establishment of a unitary school system in the City of Chattanooga, such motion apparently being based upon *Green* v. *School Board of New Kent County*, 391 U.S. 430, 437-8 (1968), which charged de jure school boards with "the affirmative duty to take what-

[10] 373 F.2d 75, 76 (1967).

ever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch."

The district court denied the Motion for Summary judgment (2/19/71) but set the case for evidentiary hearing and specified the issues for trial, placing the burden of proof upon the Board to show that its actions had met the obligation to establish a unitary school system.

As invited by the District Court, the Board responded:

> "If the affirmative duty referred to by the Supreme Court does encompass affirmative decisions by the Board based solely upon race, and coupled with compulsion by the Board in order to increase the number of whites in all-black high schools and the number of blacks in formerly all-white high schools, then defendant Board would not have met its affirmative responsibility to establish a unitary school system when this concept is so interpreted as to require a recognition of race." (3/8/71) Appendix in Sixth Circuit Nos. 71-2006, -2007, p. 87.

1971 EVIDENTIARY HEARINGS

The evidentiary hearing was held on April 14, 1971, May 11-19, 1971 inclusive, some eighteen days after this Court's decision in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). Following this hearing Judge Wilson found that defendant had not complied with the constitutional responsibility to establish a unitary school system and ordered submission of a new plan of desegregation to "maximize integration". On June 16, 1971, said plan was filed incorporating racial gerrymandering of zones and the assignment (and transportation) of students, faculty and supervisory personnel solely upon the basis of race in order to increase both student and faculty racial desegregation. A hearing was held on July 16, 1971 on the acceptability of the Board's amended plan along with the plaintiffs' objections thereto.

On July 26, 1971 the Court approved all substantive portions of the amended plan, 329 F.Supp. 1374, except the high

school portion, and ordered the plan implemented to the extent possible by September 1971. The plaintiffs appealed objecting to the inadequate degree of student desegregation (racial imbalance) to be accomplished by the plan as approved. Objection centered on those elementary schools where the racial proportion would be less than 30% of either black children or white children. The schools included were Barger, 20% black; Carpenter, 14% white; Long, 16% black; Rivermont, 12% black; Sunnyside, 15% black. The district court said:

> "With regard to the five elementary schools that will retain racial ratios of less than 30% or more than 70% of one race, the Court is of the opinion that the Board has carried the burden of establishing that their racial composition is not the result of any present or past discrimination upon the part of the Board or other state agency. Rather, such result is the consequence of demographic and other factors not within any reasonable responsibility of the Board."

As was found by Judge Wilson, all of the remaining twenty-seven elementary schools under the plan "will have racial ratios of not less than 30% nor more than 70% of any race in each school." (p. 1383).

The district court went on to say:

> "To the extent that any student racial imbalance exists in any of the elementary schools, the Court is of the opinion that the Board has carried the burden of establishing that such racial imbalance as may remain is not the result of any present or past discrimination upon the part of the Board or other state agency. Rather, such limited racial imbalance as may remain is the consequence of demographical, residential, or other factors which in no reasonable sense could be attributed to School Board action or inaction, past or present, nor to that of any other state agency." (p. 1383).

The treatment of the junior high schools was substantially in the same manner as that of the elementary schools. Only

Hardy, 27% white; Dalewood, 29% black, and Long, 15% black, deviated from the 30-70 percent ratio. At page 1384 the court said:

> "In the light of all the record, the Court is of the opinion that the junior high school plan as submitted by the defendants removes all state created or state imposed segregation. To the extent that any student racial imbalance exists in any of the junior high schools, the Board has carried the burden of establishing that such racial imbalance as remains is not the result of any present or past discrimination upon the part of the Board or upon the part of other state agencies. Rather, such limited racial imbalance as may remain is the consequence of demographical, residential, or other factors which in no reasonable sense could be attributed to School Board action or inaction, past or present, nor to that of any other state agency. The Court is accordingly of the opinion that the defendant's plan for desegregation of the Chattanooga Junior High Schools would eliminate 'all vestiges of state imposed segregation' as required by the *Swann* decision."

As to the high schools, zoning was introduced for the first time in the Chattanooga system in order to achieve greater student desegregation with the plan proposing:

	Black Students	White Students
Brainerd High	32%	68%
Chattanooga High	44%	56%
Howard High	75%	25%
Riverside High	75%	25%

The court was concerned as to whether the students and the statistical data upon which the CBE plan was based would "correspond with actual experience." Thus the court gave tentative approval only to the desegregation plan at the high school level.

The plan proposed limited transportation for elementary and junior high school students because of pairing, clustering,

and racial assignment of students. With reference to transportation the court's decision stated as follows:

> "The defendants will accordingly be permitted to implement such portions of its elementary and junior high school plans as may be feasible with the transportation facilities reasonably available to it at the commencement of the September term of school, and will be permitted to delay the implementation of any remaining portions of the said student assignment plans in the elementary and/or junior high school until the transportation facilities necessary therefor can be acquired in the prompt but orderly process of school administration and of local governmental affairs, and until such facilities can be placed in use with safety and with a minimum of interruption of the educational program. As soon as the defendants can formalize their plans in this regard, and in no event later than within thirty days, the defendant will advise the court of their proposed implementation schedule in accordance with the foregoing." (p. 1388).

By order of August 5, 1971, the district court permitted delay as to transportation "until the transportation facilities necessary therefor can be acquired in the prompt but orderly process of school administration and of local governmental affairs, . . ." (Appendix in Sixth Circuit Nos. 71-2006, 2007, Vol. I, p. 215).[11]

PROCEEDINGS IN 1972

A proceeding in state court resulted in an injunction against the Commission of the City of Chattanooga from providing any public funds to transport school students for the purpose of achieving racial balance. On January 24, 1972, CBE filed a "Status Report on Amended Plan of Desegregation and Motion for Further Instructions" bringing the state court decision

[11] References are to the appendix and transcript of the appeals to the United States Court of Appeals for the Sixth Circuit as indicated.

and injunction to the attention of the Federal district court. Further proceedings were had at the district court level as a result, but such proceedings are not germane to the present appeal, except that in the district court opinion filed on February 4, 1972, the district court, 341 F.Supp. 193, 200, directed that its order of August 5, 1971, be fully implemented no later than the fall term of school in 1972, unless otherwise directed by United States Court of Appeals.

On May 18, 1972, CBE filed a report as required by the opinion of February 4, 1972, with reference to "any racial imbalance remaining in the four general purpose high schools." The report referred to a statistical report entitled "Tenth Day of School Enrollment Report 1971-72 School Term" dated September 23, 1971, and filed with the court on September 24, 1971, coupled with a supplementary statistical analysis dated March 17, 1972, and entitled "Summary Analysis of Senior High Schools 1971-72 Enrollment of 1970-71 Pupils Projected to Enroll."

Oral argument before the court of appeals in Nos. 71-2006, 2007 took place on June 5, 1972.

CBE filed a Motion for a Limited Stay on June 23, 1972, pursuant to Section 803 "Provision Relating to Court Appeals, Title 8 — General Provisions Relating to the Assignment of Transportation of Students" of Education Amendments of 1972 as passed by the United States Senate on May 24, 1972, the House of Representatives on June 8, 1972, and as signed by the President of the United States on June 23, 1972. A hearing was held on said motion and other pending motions on July 27, 1972. Lengthy briefs were filed by the parties and on August 11, 1972, the district court granted CBE's Motion to Stay, but limited to "only of such portions of the previous orders of this Court as necessarily involve the transportation of elementary or junior high school students, such stay being subject to the further orders of this Court." Plaintiffs filed Notice of Appeal from said order on August 17, 1972.

A report entitled "Submission of Student Desegregation Statistics by Defendant as of the Tenth Day of School, 1972-73, U.S. Department of Health, Education, and Welfare School System Summary Report" and explanatory material was filed with the district court under date December 4, 1972, containing the statistical facts evidencing the response of students to the desegregation plans in the second year of partial implementation.

On October 11, 1972, the case was remanded to the district court by a 2-1 decision. Subsequently the plaintiffs filed a Motion for Rehearing and suggestion of an en banc hearing. Such was granted and on December 14, 1972, oral argument took place before the Sixth Circuit Court of Appeals in Cincinnati sitting en banc.

PROCEEDINGS IN 1973

Oral argument before this Court in the *Richmond* case, (*School Board of the City of Richmond, Va., et al.* v. *State Board of Education of Virginia, et al.*, 412 U.S. 92 (1973)) took place on April 23, 1973. The en banc decision of the Sixth Circuit reversing a 2-1 decision of the three-judge panel and affirming the district court was filed on April 30, 1973, 477 F.2d 851. The following appeared in said decision:

> "The Board of Education has filed a supplemental record in this court containing statistics said to reflect changes which have occurred after the decisions of the District Court. We decline to consider these statistics in the present appeal. Appropriate relief required by changed conditions is a matter for presentation to and consideration by the District Court. We re-emphasize the holding of this Court in *Kelley* v. *Metropolitan Board of Education of Nashville and Davidson Country*, supra:
>
> > 'Like most decrees in equity, an injunctive decree in a school desegregation case is always subject to modification on the basis of changed circumstances.' 463 F.2d at 745-46."

Under date May 31, 1973, counsel for CBE submitted an

opinion in letter form to defendant entitled "Suggested Procedure for Board Analysis of Proposed Amendments to Plan of Desegregation and Educational Reasons Therefor." (Tr. 828, Exhibit 18).[12] The defendant was reminded that in *Brown II* "the primary responsibility for elucidating, assessing, and solving these problems" was clearly placed upon school authorities, the clear implication being that initiation of solutions was the responsibility of school authorities and not the district court. The thrust of the opinion was to advise CBE as to the steps needed to be taken if CBE was to meet its constitutional obligation under *Brown I* and *II* in seeking to find a workable solution to compensate for the dual school systems operated prior to September of 1963-66 in Chattanooga – taking into account the changed circumstances since initial and partial implementation of the 1971 desegregation plan, or represented by the loss of one-third (1/3) of the white student population in only two years.

The above recommendation by counsel was considered at a meeting of the Chattanooga Board of Education on June 13, 1973 and the unanimous decision was made to accept said recommendation.

Subsequent board meetings were held on June 19, 1973, June 26, 1973, July 3, 1973, July 9, 1973, and July 11, 1973 on which date the proposed adjustments to the June 16, 1971 plan of desegregation were unanimously agreed upon by a board composed of four whites and three black members, for presentation to the district court.

On July 20, 1973, CBE filed its Motion for Further Relief: to Adjust Amended Plan of Desegregation as Filed June 16, 1971, and Brief in Support of Said Motion for Further Relief (A-8-33).[13] An evidentiary hearing was held on October 2, 3, 4, 5, 9, 10, and 11 and thereafter a Memorandum Opinion denying CBE's motion was filed on November 16, 1973, 366

[12] No. 74-2100-2101 — U.S. Court of Appeals for Sixth Circuit.

[13] Ibid.

F. Supp. 1257, followed by final order on December 18, 1973 (A-435).[14]

Plaintiffs filed their motion to amend the Memorandum Opinion of November 16, 1973 and for new trial and for further relief on December 26, 1973 (A-438).[15] Thereafter on January 7, 1974 said motion was supplanted by an amended motion to amend for a new trial and further relief (A-441).[16]

While the above events were taking place at the district court level, CBE had filed a Petition for Writ of Certiorari with this Court, said case being docketed on July 25, 1973. Such petition was from the en banc affirmance by the Court of Appeals for the Sixth Circuit entered on April 30, 1973. 477 F.2d 851 (1973). Certiorari was denied by this Court on November 12, 1973, 414 U.S. 1022.

PROCEEDINGS IN 1974

On June 20, 1974, Judge Wilson filed a Memorandum on Pending Motions finding that plaintiffs' Motion and Amended Motion for a New Trial or for Further Relief of January 7, 1974 was without merit and should be denied. On July 12, 1974 the plaintiffs' notice of appeal (No. 74-2100) from Judge Wilson's denial of the Motion as set forth above was filed. On July 22, 1974 CBE's notice of appeal (No. 74-2101) from the order of December 18, 1973 was filed. The appellate oral argument was on April 18, 1975 with the opinion being rendered on October 20, 1975. The plaintiffs' "Motion for Rehearing or Rehearing En Banc" was filed on November 4, 1975 with an "Amended Petition for Rehearing and Suggestion of Rehearing En Banc" being filed on November 24, 1975 pursuant to a grant of extension of time in which to file having been noted on November 4, 1975.

[14] Ibid.

[15] Ibid.

[16] Ibid.

Plaintiffs' petition for a rehearing in No. 74-2100 called the attention of the court of appeals to the fact that this Court had granted Certiorari on November 11, 1975 in *Pasadena City Board of Education, et al.* v. *Spangler, et al. and United States,* No. 75-164, going on to request a delay in action upon such petition to rehear until *Pasadena,* supra, was decided.

SUMMARY OF THE ARGUMENT

While the *Spangler,* supra, opinion is limited severely in its scope, and while its authority is further restricted by the reasoning in the majority opinion as well as in the concurring opinion, nevertheless the net effect of the opinion is to require Pasadena to undertake a student reassignment as a constitutional obligation because a "fixed mathematical racial balance" has been exceeded. There is no way to interpret this impact upon Pasadena other than a violation of the clear language used by this Court in *Swann,* supra.

And of greater significance, the effect of the opinion is to remove state action and causation from any consideration in school desegregation cases. Specific language in *Green,* supra, and *Swann,* supra, is thereby effectively ignored as irrelevant and no longer of any constitutional significance.

The conflict with the Sixth Circuit in *Mapp,* supra, is obvious for the essential character of the continuing presence of state action is there recognized and not ignored for its absence is the basis for approval of the racial results in two Chattanooga high schools subsequent to affirmative effort. An additional support for the *Mapp,* supra, decision by the Sixth Circuit is its awareness that racial balance was truly "a starting point" and not a constitutional requirement as this Court emphasized in *Swann.*

This Court also recognized in 1971 that Swann provided guidelines only, that such were incomplete and imperfect, and thus that further clarification would become essential in the future. CBE suggests to this Court that Pasadena provides the opportunity to clarify the nature of a school board's continuing constitutional obligation under *Brown I* and *II,* and

its progeny. The clarification is essential if school authorities and district courts are to be able to perform their respective functions so that educational opportunity and educational quality can regain their central importance in public education.

More specific guidelines are urgently needed as to: (1) what constitutes full compliance; (2) the restrictions upon the use of racial balance; (3) the constitutional right and state action; (4) the constitutional remedy, state action, causation and practicalities; (5) continuing default after affirmative action; (6) the burden of proof before compliance and after compliance; and (7) when court supervision may be terminated.

CBE is fearful that additional guidelines generated by the facts in *Spangler,* supra, could be expanded and misinterpreted by lower courts as Swann has been since 1971. Such a result could operate to the permanent detriment of the educational opportunity of the school children in the Chattanooga system.

ARGUMENT

AN ANALYSIS OF THE PASADENA OPINIONS ILLUSTRATES THE NEED FOR CLARIFICATION IF SCHOOL AUTHORITIES AND DISTRICT COURTS ARE TO BE AWARE OF WHAT THE CONSTITUTION REQUIRES OF THEM.

Precisely what the Ninth Circuit Opinion in the Pasadena case is authority for requires careful analysis.

THE MAJORITY OPINION

Circuit Judge Ely at the onset of his opinion pointed out the need "to underscore the narrow ambit of our review, a construction resulting from the procedural posture in which this appeal is before our court." *Spangler* v. *Pasadena City Board of Education,* 519 F.2d 430 (5/5/75). p. 431 The opinion is quite specific in describing what is before the court.

> "The only question before us now is whether the District Court erred in its determination, in denying appellants' 1974 motions, that events and circumstances occurring and existing in Pasadena since the Pasadena Plan was ordered implemented do not justify relief from the January 23, 1970, Decree, relinquishment of the court's continuing jurisdiction over the Board, or the substitution of a substantial alteration of the original Pasadena Plan." p. 431

However, since the court of appeals affirmed the district court opinion, the net effect of the affirmance is to place the stamp of approval upon a plan which included a mathematical racial balance in the sense that majority black schools were declared unconstitutional per se without any necessity of giving consideration to the cause thereof.

The opinion contains a further restrictive aspect when on page 434, after stressing the fact that the appellate court is "compelled to apply the clearly erroneous test to the trial judge's resolution of the factual issues raised by conflicting evidence bearing on the question of changed conditions", the court further limits its affirmance of the district court's denial of the motion, to "insofar as that motion sought relief from the Orders of January 23 and March 10, 1970, and dissolution of the injunction requiring that there be no school in Pasadena wherein the student body consisted of a majority of minority race." (p. 434)

After reciting factors in the record supporting the district court's opinion as well as the fact that it was not "clearly erroneous"; and after further pointing out that "we cannot conscientiously hold that the district judge abused his broad equitable discretion . . ." page 437, Judge Ely again limited the decision by saying:

> "We must therefore expressly disapprove such portions of the record as suggest that the district judge interprets his injunction to require continuous annual redistricting."

In referring to the district judge's reference to the fact that there would be no majority of any minority in any school in Pasadena "during my lifetime," Judge Ely noted the apparent spontaneity in the remark and went on to say that such:

> ". . . cannot be broadly interpreted, inasmuch as it suggests that even after the court has determined that its plan has been effectively implemented and racial discrimination eliminated from the system, a disruptive juggling of students to correct *de minimis* alterations in racial balance in specific schools might be required annually, or even day by day. This is precisely *what we interpret Swann to prohibit.*" (Emphasis added)

THE CONCURRING OPINION

The foregoing analysis is evidence of the narrow basis for the 2-1 affirmance. However, such also is reinforced by the separate concurring opinion of Circuit Judge Chambers. Being mindful of Federal Rule of Civil Procedure 52(a) and the obvious broad discretion granted to district court judges in desegregation cases by the *Swann* opinion, Circuit Judge Chambers did concur, but he said he would accept only one more student reassignment:

> "But I cannot go along with an order continuing, except for a short time, *beyond one more reassignment* of pupils that is found to be in compliance. Prospectively, I reject the edict that there shall never be a particular school with a 'majority of any minority' or majority of any minority as long as '[the district judge] live[s].' Never is a long time." (Emphasis added) (p. 440)

Judge Chambers followed this with these revealing words:

> "I interpret Judge Ely's opinion as requiring a termination of the mandatory injunction within a very short time after the school again gets in compliance and I think the message is clear to the district court." (p. 440)

His concern is vividly expressed in this language:

> "Next thing we shall find ourselves grading students' papers – if we keep the schools under a court decree at all times." (p. 440)

Thus, Judge Chambers was just barely persuaded to vote to affirm the district court; and would permit only one more reassignment. If Judge Chambers had not been willing to permit one more reassignment then he would have had to have joined Judge Wallace in dissent and the opinion would have been to the contrary, reversing District Judge Real. The comment also indicates that Judge Chambers assumed that a reassignment would be necessary to correct the majority black schools existent in the Pasadena system at that time. He also assumed that Pasadena had been in compliance at some time by the reference to "after the school *again gets in compliance.*"

In the concluding portion of Judge Chambers' opinion, he makes an oblique reference to causation by indicating his interpretation of the Constitution to be such that racial changes in schools solely because of shifts in residential patterns is not unconstitutional.

> "I have some doubt that one will find any de jure segregation after the decree has been complied with again if all that is done is to let residence patterns shift by themselves."

THE DISSENTING OPINION

The thrust of the dissenting opinion by Circuit Judge Wallace lends support to the judgment that the Pasadena case rests on a very narrow basis, pointing out that his disposition would not jeopardize the desegregation already achieved "nor that still necessary to remedy any de jure segregation which may remain in the Pasadena schools." page 441. Judge Wallace also stated that he would reverse and remand the district court because the district court failed to apply the proper test. The test as seen by Judge Wallace is included in the following quote:

> "The test for retaining jurisdiction and continuing a desegregation injunction in effect is not the school district's maintenance of an inflexible racial balance but whether 'the affirmative duty to desegregate has been accomplished and racial discrimination *through official action* is eliminated from the system.'" (p. 441) (Emphasis added).

The dissent points out that the district court opinion is based upon the premise that de facto and de jure segregation are indistinguishable. Judge Wallace says such is a "fundamental flaw.":

> "But we have rejected the equivalence of de facto and de jure segregation and have held that segregation in public schools is unconstitutional only if it is de jure segregation; that is, only if it results from intentionally segregative state action.
>
> "Thus the justification for the desegregation decree in this case must be the de jure segregation found in 1970, not de facto segregation existing before or after that date."

After citing four decisions of this Court impliedly to support such conclusion, the dissent also takes issue with the departure of the district court from this Court's direction to use mathematical ratios as "no more than a starting point."

After the foregoing analysis, the net effect of the Pasadena decision in its present posture is that a mathematical racial balance has become a Constitutional requirement in that school system. What can be more precise than the change in the race of one student having the effect of shifting a school system from a constitutional posture of compliance to the unconstitutional posture of non-compliance; and particularly when this shift requires an adjustment throughout the entire school system? It would appear reasonable to say that the Ninth Circuit decision is a flagrant violation of this Court's disapproval of "a fixed mathematical racial balance," *Swann*, page 23-24.

Consequently, until this Court decides otherwise, a fixed mathematical racial balance has been *the deciding factor* in Pasadena.

In order to gain proper judicial prospective, however, another ingredient must be added. Not only has the change in the color of one student moved a board from the status of compliance to non-compliance, such result has occurred without any reference to causation. There is no mention of causation by Judge Real in his opinion. And what does this mean? That the district judge assumed a causal connection between state action in some form and the student bodies in several schools becoming majority black? Or that Judge Real subconsciously reflects his conviction that state action is no longer an essential element? Perhaps he reads *Brown I* and *II* and *Swann* as requiring the state action element initially to establish default, and thereafter there is a legal presumption that it continues to persist indefinitely. Under such theory the stain of history continues to convict succeeding generations no matter how valiant may have been the intervening effort to remedy a past wrong. Can this possibly be the justice that the Constitution was created to support?

THE CHATTANOOGA OPINIONS

If we contrast the opinions in the Chattanooga case, both that by Judge Wilson at the district court level and that of the court of appeals, it is significant that both opinions specifically address their attention, as well as the language of the decisions, to the question of causation. A racial disproportion did exist at Riverside and Howard and its undesirable character was acknowledged by all parties. However, such was found not to violate the Constitution for the reason that the state action element was absent. In fact, the racial imbalance persisted in spite of affirmative state actions specifically designed to remedy the objectionable racial balance. There was also a serious question as to whether a sufficient number of white high school students were then available

within the system to remedy the racial imbalance at Riverside and Howard.

As a result there is no doubt that, in the Sixth Circuit, in order for racial segregation to be unconstitutional there must be facts to support a conclusion that such segregation was caused by state action and thus is de jure as reflecting segregative intent of the state as contrasted with de facto as reflecting the absence of segregative intent by the state. On the other hand, in the Ninth Circuit, once segregative intent, state action, de jure segregation have been found to exist, whenever an objectionable degree of racial imbalance occurs in the future, seemingly it will be presumed that the requisite state action persists merely from the fact of the existence of the racial imbalance. Thus, under such circumstances, racial segregation may be characterized as per se unconstitutional, a position that this court has refused to adopt in its reliance upon the Fourteenth Amendment and its reference to state action.

If we can assume that members of school boards generally intend to comply with their oaths of office to support the Constitution of the United States, and if we further may assume that they must then turn to their own legal counsel for guidance as to exactly what the Constitution requires of them, how does a lawyer interpret the Pasadena decision as applicable to his client and its duty to implement school desegregation? After interpreting the Pasadena district court opinion, the majority opinion of Circuit Judge Ely, the separate concurring opinion of Circuit Judge Chambers, and the dissenting opinion of Circuit Judge Wallace, legal counsel must consider the Chattanooga Sixth Circuit opinion, as well as the Atlanta decision of the Fifth Circuit.[17] Then what does he advise his client?

As Circuit Judge Chambers said, "This is sad business."[18]

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[17] *Calhoun* v. *Cook*, 522 F.2d 717 (5th Cir. 10-23-75).

[18] *Spangler*, supra, p. 440.

Clarification is needed for the guidance of school authorities and for district courts for they together represent the front line where the principles enunciated in *Brown I and II* and *Swann* finally become a reality for the school children whose future is now, in the quality of their present educational opportunities.

PASADENA AND CHATTANOOGA AS REPRESENTING A CONFLICT BETWEEN THE NINTH AND THE SIXTH CIRCUITS

In its Petition for Writ of Certiorari Pasadena stated the second question presented to be "Is a school system required to amend its judicially validated desegregation plan to accommodate for annual demographic changes for which the school system is in no way responsible?

The plaintiffs-appellants in the Chattanooga case have cited this particular question as the basis for their requesting the United States Court of Appeals for the Sixth Circuit to stay further consideration of the plaintiffs-appellants' petition for rehearing of the opinion of October 20, 1975, (App. C).

There is a suggestion that the Pasadena decision conflicts with the Chattanooga decision, and on this particular question presented. It is possible to construe the Pasadena District Court decision, as affirmed by the appellate court, as requiring the Pasadena system to adjust its desegregation plan to avoid the constitutional violation found to be implicit in the fact that Pasadena has a number of schools with a majority black student body, and such was clearly declared unconstitutional by the district court in the Pasadena case. The key words in the question presented are: ". . . for which the school system is in no way responsible". If the Pasadena case is construed as requiring Pasadena to adjust its desegregation plan, such is tantamount to a requirement for annual adjustments even though the Pasadena Board is in no way responsible for the changes that occur.

Now what does the Chattanooga case hold with reference to this particular question? In giving final approval to the high school plan, Judge Wilson had this to say:

> "However subsequent evidence has now demonstrated that changing demographic conditions within the City and other *de facto* conditions beyond the control and responsibility of the School Board, including the voluntary withdrawal of white students from the system, have become causative factors for the present racial composition of the student body in those schools (Riverside and Howard) and not the original action of the Board in creating segregated schools at these locations. It should be recalled in this connection that the Plan previously approved included provision for students to elect to transfer from a school in which they were a majority to a school in which they would be in a minority." 366 F. Supp. 1257 (11-16-73, at page 1261)

The court of appeals quoted from this portion of Judge Wilson's opinion and then had this to say:

> "While the cause of the departure of white students was disputed, there can be little doubt upon the record that the difference between the anticipated mix and the actual attendance of the high schools when the plan was put into effect was due to a substantial departure of white students from the public schools in Chattanooga, a circumstance which the district judge found to have occurred beyond the control and responsibility of the School Board." (App. C-3, 4)

The Sixth Circuit affirmed Judge Wilson and in doing so clearly found that the district court's actions complied with the Constitution. Such is reflected in the following quote:

> "Having implemented the plan for desegregating the high school by establishing zones for attendances which were designed to achieve a high degree of racial balance throughout the system, having provided further for continuance of a majority to minority transfer policy, the district judge conceived that he had obeyed the mandate

of *Brown* v. *Board of Education of Topeka, II*, 349 U.S. 294 (1955) *Brown II* and more particularly of *Swann* v. *Charlotte Mecklenburg Board of Education*, 402 U.S. 1 (1971). So do we." (App. C-5)

It is clear that in the Chattanooga case, both from the district court opinion and from the opinion of the court of appeals that the answer to the above question as presented is "no" and without any qualifications.

The objectionable racial proportion already existed in Chattanooga at the time the plan was designed. Consequently, the plan was designed to correct an existing condition. Such is contrary to the facts in Pasadena where the objectionable condition arose as a result of the operation of the plan.

In Chattanooga, the objectionable condition continued after a specific remedy had been designed and fully implemented in order to correct the objectionable racial ratio. No affirmative action has been taken to correct the objectionable racial ratio at Pasadena as such remains for future action of the Pasadena Board dependent upon the outcome of the Pasadena case now before this court.

Both appellate courts relied upon Fed.R.Civ.P. 52(a), the Ninth Court saying:

> ". . . we are compelled to apply the clearly erroneous test to the trial judge's resolution of the factual issues raised by conflicting evidence bearing on the question of changed conditions." *Spangler*, supra, p. 434.
>
> "Applying the above standards to the case at hand, it would constitute an abuse of our power to hold that the District Court was clearly erroneous in finding that the appellants did not establish such a sufficient change in conditions as would require the court, in the exercise of its discretionary equitable powers, to modify or dissolve its earlier decree." *Spangler*, supra, p. 434.

The appellate court's reliance upon this basis for its judgment is further evidenced by subsequent references in the opinion, including:

> "When viewed from the perspective of this long line of Supreme Court authority, we cannot conscientiously hold that the district court abused his broad equitable discretion in refusing to modify or dissolve his Decree." p. 437
>
> "Starting from our earlier premise that the District Court's determination that the School District had not yet effectively discharged its affirmative duty to eliminate segregation was not clearly erroneous, we hold . . . ." p. 439
>
> "On this record, we could not hold that the court abused its discretion in refusing to permit implementation of an alternative plan . . ." p. 440

In the Chattanooga case, the Sixth Circuit, while not referring specifically to Rule 52(a) reflects consideration thereof the following:

> "With respect to Judge Wilson's refusal to modify the previous final plan of desegregation, we find that he did not abuse his discretion in so doing, particularly since this court has given its approval of that plan." (A-C-2)

However, in the Chattanooga case, the appellate court's reliance upon Rule 52(a) in affirming the district court's decision giving final approval to the tentative plan of desegregation from the Chattanooga high schools, was not the sole basis of the Sixth Circuit's opinion. The court found support in the record for the district court's finding that the demographic changes in the city itself were the cause of the remaining imbalance and that such was "beyond the control and responsibility of the School Board." Such was not clearly erroneous.

The opinion of the Sixth Circuit recognizes that the affirmative effort was undertaken to desegregate Riverside and Howard and this affirmative effort was unsuccessful. The opinion also recognizes that while the cause of the departure of white students was disputed, there is no inference that any action of inaction upon the part of the school board contributed to this failure of the affirmative action to effect its desired re-

sults. That the objectionable condition existed in both Riverside and Howard was not questioned by any party. The practicalities referred to in *Davis* v. *Board of School Commissioners of Mobile County,* 402 U.S. 33 (1971), are basically a part of the consideration of the courts in approving the Chattanooga plan as so implemented. This is reflected in the following quote from the Sixth Circuit opinion:

> "What he was finally faced with here, however, was rather a more subtle and lingering malaise of fear and bias in the private sector which persisted after curative action had been taken to eliminate the dual system." (A-C-6)

In the process of analyzing both the Pasadena and the Chattanooga decisions to isolate the essential character of the conflict between the two holdings with reference to year adjustments and the necessity therefor, the need for clarification of Constitutional principles in the desegregation field is revealed with alarming clarity, particularly in trying to determine what the Constitutional obligation of the Pasadena Board is under the decision of the district court and the appellate court absent clarification by this court.

Is the Pasadena Board under an obligation to make adjustments in its desegregation plan in order to change the majority black schools in its system at the present time? It is clear that the decisions of Judge Real prohibit a majority black school in the system as a Constitutional matter. As long as such Constitutional principle remains without clarification, obviously the Pasadena Board now is in an unconstitutional posture and is under an obligation to do whatever is necessary to correct that Constitutional violation. Thus the Pasadena Board is now under an obligation to make adjustments in those schools where the racial portion is majority black.

"A fixed mathematical racial balance, prohibited by this Court in *Swann*" has become the constitutional requirement in Pasadena.

BUT WHAT CONSTITUTES FULL COMPLIANCE?

The basic issues presented to this Court in the Pasadena case relate to what the Constitution may require in school desegregation cases in order to provide a basis for removing public school systems from continued supervision by District Courts, such supervision having been initially required as a result of *Brown I and II.* Full compliance is the requirement.

In *Swann,* supra, this Court recognized that the time would come when school authorities could be said to "have achieved full compliance with this Court's decision in *Brown I.*" In commenting upon this feature of actuality, this Court did not provide specific guidelines nor detailed description of what would be essential in order for a school board to convince a district court that it had arrived at this status with reference to school desegregation. This Court merely recognized the fact that such a time would come.

Circuit Judge Ely in his majority opinion in Pasadena in Footnote One, pointed out that this issue had not been directly addressed by any Courts of Appeals or by the United States Supreme Court. Judge Ely described the question as "when and under what circumstances a school district may compel a Federal District Court to relinquish jurisdiction and end its supervison, . . ." Again, as pointed out in Footnote Six of the Pasadena case, the Congress of the United States attempted to codify the above referenced language in *Swann.* This codification is reflected in Pub. L. No. 93-380, paragraph 208 (August 21, 1974), 88 Stat. 484.

An examination of this Congressional effort, as contrasted with the actual language set forth in *Swann,* provides reasonably clear evidence of the need for clarification by this Court as to precisely what can be found by district courts to meet the Constitutional requirements of *Brown I and II* so as to justify a holding of full compliance with the consequent dissolution of the injunction, termination of the litigation, and freedom from district court supervision.

Every lawyer representing every school board in the land with desegregation problems must at some time attempt to advise his client of what is required of them based upon an interpretation of this particular portion of *Swann*. The Congressional effort at codification described four conditions as equating full compliance:

1. "school system is desegregated", or
2. "meets the constitutional requirements", or
3. "is a unitary system", or
4. "has no vestiges of a dual system".

All of the above are reasonably complex factual and legal determinations which must in the final analysis be made by a district court. However, it is appropriate to keep in mind that the initial determination as to what a court might conclude satisfies any of the above descriptions, is basic to the advice of legal counsel to school boards. And thus it is the school board that must make this initial determination recognizing that its legal interpretation, and its evaluation of the facts combined, may not satisfy the district court. However, since the Congress is not the body to interpret the Constitution of the United States this codification is of limited guidance, if any, in the course of preparing an opinion as to what the Constitution requires, and particularly the Constitution as described by this Court in *Swann*. The statutory language is so general in meaning that it does not contribute to clarification.

This Court stated in *Swann*, supra, (p. 32) that "Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies . . ." But this court imposed two conditions precedent – that (1) "the affirmative duty to desegregate has been accomplished," and (2) further that "racial discrimination through official action is eliminated from the system." How does this concept relate to the full compliance concept?

THE NATURE OF THE DISCRIMINATION WHICH MUST BE ELIMINATED (PRIOR TO FULL COMPLIANCE)

The key concepts in these two conditions are affirmative duty and official action. As CBE interprets this language there is a responsibility upon school boards to undertake an affirmative duty to desegregate; and an effort that is practical, honestly conceived, honestly implemented, and which has reasonable chances of accomplishing the desired goal. That this effort need not completely eliminate racial discrimination per se is implicit in the second condition where the reference is made solely to a particular kind of racial discrimination – that which has occurred "through official action."

It is only the racial discrimination created by the State which is unconstitutional. It is this specific and limited kind of racial segregation that is unconstitutional. Such clearly does not condemn all discrimination based upon race wherever it may exist. The unconstitutionality, the illegality, is limited to such racial discrimination as can be connected in a reasonable fashion with some state action.

This Court has been consistent in making this distinction. To illustrate, in *Green*, supra, where a freedom of choice plan was before the Court in a rural system with only two school buildings, this court stated:

> ". . . the State acting through the local school board and school officials, organized and operated a dual system, . . ." page 435.
>
> "in the context of the State-imposed segregated pattern . . ." page 432.
>
> ". . . then operating State-compelled dual systems . . ." page 432.
>
> ". . . toward disestablishing State-imposed segregation." page 439.

". . . for dismantling the State-imposed dual system . . ." page 439.

". . . and the Court should retain jurisdiction until it is clear that State-imposed segregation has been completely removed." page 439.

"A desegregation program to effectuate conversion of a State-imposed dual system to a unitary, non-racial system . . ." page 441.

The opinion in *Swann*, continues such requirement without any hint of qualification. From reading the opening sentence in *Swann*, it is obvious that this Court was concerned in that opinion solely with school segregation found in "racially separate public schools established and maintained by State action."[19]

That this is the limited segregation under consideration by the Court is further emphasized by the fact that this Court again modifies the word "segregation" whenever it appears in the *Swann* opinion by using it in conjunction with either "State-imposed", "state-enforced", or phrases with similar import. Such appears on pages 11, 13, 14, 15, 18, 21, and repeatedly in the *Swann* opinion.[20]

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[19] "We granted certiorari in this case to review important issues as to the duties of school authorities and the scope of powers of Federal Courts under this Court's mandates to eliminate racially separate schools *established and maintained by state action.*" (Emphasis added) *Swann*, supra, p. 5.

[20] ". . . state-imposed segregation by race in public schools denies equal protection of the laws." p. 11

". . . where dual school systems had historically been maintained by operation of state laws." Such is followed by a quote from *Green* which includes the term 'state-imposed segregation.' p. 13

". . . the massive problem of converting from the state-enforced discrimination . . ." p. 14

". . . to eliminate from the public schools all vestiges of state-imposed segregation . . ." p. 15

". . . the responsibilities of school authorities in desegregating a state-enforced dual school system . . ." p. 18

". . . a potent weapon for creating or maintaining a state-segregated school system . . ." p. 21

AFTER FULL COMPLIANCE

If the state did not cause, create or maintain the segregation, if there is no casual connection between the segregation and the state, such is not within the ambit of the Fourteenth Amendment if language is to be given its ordinary meaning.

Returning to that portion of the *Swann* opinion where reference is made to "year-by-year adjustments," this Court dealt with the future by recognizing that the Federal courts would continue to have power to deal with future problems; but went on to say:

> "But in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by District Courts should not be necessary." (p. 32)

Again the thrust of this language assumes the absolute necessity for State action before a Constitutional violation exists. No contrary interpretation is possible.

Thus after full compliance, when an objectional racial proportion is found to exist, the next step must be an evaluation to determine whether or not the cause of such racial segregation is some form of State action. Then, the burden is upon the objecting party to prove the existence of the State action or some deliberate attempt to fix or alter demographic patterns for the purpose of affecting the racial composition of the schools. Absent such evidence, the district courts are without jurisdiction. There is no default.[21]

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[21] "In seeking to define even in broad and general terms how far this remedial power extends it is important to remember that judicial powers may be exercised only on the basis of a constitutional violation. Remedial judicial authority does not put judges automatically in the shoes of school authorities whose powers are plenary. Judicial authority enters only when local authority defaults." *Swann*, supra, p. 16

The above dictum in *Swann* also is completely consistent with and complements the earlier burden of proof section of *Swann* which deals with desegregation plans (prior to full compliance) coming from school systems with a mixed population and particularly when the desegregation plan contemplates schools described as "all or predominately of one race" or "one race schools", or "schools that are substantially disproportionate in their racial composition", or "schools that all are predominately of one race."[22]

District courts were directed to scrutinize such schools "and the burden upon the school authoritie will be to satisfy the Court that their racial composition is not the result of present or past discriminatory action on their part."[23] Without proven state action such schools were not unconstitutional, even prior to full compliance.

PRACTICALITIES

It should be reasonably clear by now, based upon the experience since 1954, that however commendable it may be to make the effort to remove all vestigial remains of a dual school system, the practicalities of the situation are such that the power necessary to excise from any community all the vestigial remains of a dual school system is seldom available in urban areas.[24] And in any event, desegregation of some objectionable proportion, at least objectionable to some substantial part of the population, will continue to exist for the foreseeable future, regardless of the efforts of school systems or the federal judiciary to achieve a contrary posture.

For a time the effort under *Brown I and II* was confined to the removal of structures created and maintained by the state

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[22] *Swann*, supra, p. 26.

[23] *Swann*, supra, p. 26.

[24] "Today hindsight highlights the resulting erosion, revealing that *every judicial design* for achieving racial desegregation in this system has failed." *Calhoun*, supra, p. 718.

to perpetuate segregation. What the state had created, it also had the power to alter or destroy. However, such proved inadequate to the task of the elimination of racial segregation. Consequently, affirmative state action was required. Thus, the state addressed its attention to removing discrimination it did not create. Its capabilities in this area have several practical limitations.[25]

Until such time as this reality is recognized and given wide distribution to the minority communities of this country, the continued hope that at some unknown time racial balance can be achieved throughout this country in its public school system, will continue to exist and mislead minority children as to their hopes for the future. When the final recognition does come to the effect that this balance in certain circumstances, is just not possible, there will be discredit to school authorities, to the judiciary, disbelief in the governmental and judicial processes, loss of faith in established authority, and a widespread bitterness because of having been misled. Such bitterness will harm the body politic for too long a period of time.

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[25] The concluding quotation in the majority opinion in the *Mapp* decision of 10-20-75 (A-C-6) was as follows: "Our objective in dealing with the issues presented by these cases is to see that school authorities exclude no pupil of a racial minority from any school, directly or indirectly, on account of race; it does not and cannot embrace all the problems of racial prejudice, even when those problems contribute to disproportionate racial concentrations in some schools." *Swann*, supra, 402 U.S. at 23.

"We are concerned in these cases with the elimination of the discrimination inherent in the dual school systems, not with myriad factors of human existence which can cause discrimination in a multitude of ways on racial, religious, or ethnic grounds." *Swann*, supra, p. 22.

TERMINATION OF LITIGATION

This Court needs to clarify the facts which will justify a district court in relinquishing jurisdiction over a public school system in public school desegregation cases. It is recognized that there is no magic formula that will give a school board or a district judge a fool proof means for determining when and under what circumstances a petitioning school system is entitled to be free of the supervision of the district court. The factual circumstances existing in Pasadena as compared with the factual circumstances in Chattanooga are indicative of the fact that each school system is different. Such diversity in communities, and in personalities, is basic to the strength of this country. However, the fact that a magic formula is not possible, should not prevent this Court from addressing its collective wisdom to the need for clarification of what an adequate Constitutional remedy in the school desegregation cases shall consist of; coupled with a further definition of what can be characterized as an adequate Constitutional effort upon school boards to meet their Constitutional duty under *Brown I and II*, including the affirmative effort in the design of the desegregation plan, as well as in the good faith effort to implement the plan once approved.

At the same time, the Court could address itself to the results that are acceptable. The respondents understandably have focused their attention upon results, but to the derogation of other aspects of the overall problem.

Results prior to an affirmative effort could be placed in one category and results subsequent to an affirmative effort could be placed in another category. In such circumstance, the Constitutional right and the Constitutional remedy merge, because of the practical aspect of the personal and individual character of racial discrimination. And to excise racial discrimination from individuals poses perhaps man's greatest problem, to date defying the power of religion no less than it continues to defy the power of government and the judiciary.

This Court has understandably extended unprecedented power, authority, and responsibility to district courts in school

desegregation cases. Being sensitive to the agony involved in the exercise of this awesome power and responsibility, this Court has given district court judges the benefit of the doubt in the exercise of these exquisite judgments which are necessary by district courts as they attempt to exercise the court's "facility for adjusting and reconciling public and private needs,"[26] in the field of public education which this Court has described as "perhaps the most single important function of state and local governments.."[27]

It follows that a lawyer attempting to defend before the Courts on appeal a school board that is attempting to uphold the district court is in a better position than a lawyer attempting to overrule the district court. In the Pasadena case the petitioner is seeking to reverse not only the district court, but also a two to one decision of the court of appeals.

PASADENA AND CHATTANOOGA

At the present time in the Chattanooga case, assuming the issues to be essentially the same as Pasadena, since the district court opinion was not satisfactory to the respondents and since the district court opinion was approved by a two to one decision of the court of appeals, the Chattanooga case in its present posture before this Court would be attempting to secure affirmance of the two lower court's decisions, a situation the reverse of the Pasadena case.

The respondents have introduced the Pasadena case into the Chattanooga proceeding by making reference to this Court's decision to grant certiorai on November 11, 1975, in the course of filing an Amended Petition for a Rehearing and a Suggestion of Rehearing En Banc on November 24, 1975.

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26 "Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling *public* and *private* needs. These cases call for the exercise of these traditional attributes of equity power." *Brown II*, supra, p. 300.

27 "Today, education is perhaps the most important function of state and local government." *Brown I*, supra, p. 493.

The respondents have made reference to the second issue as presented by the Pasadena petition which reads as follows:

> "Is a school system required to amend its judicially validated desegregation plan to accommodate for annual demographic changes for which the school system is in no way responsible?"

In said petition, the respondents went on to say:

> "We respectfully suggest that the Court's decision in the Spangler case should clarify the language of Swann, supra, with respect to the need for 'year-by-year adjustments' and provide guidance to this Court in reevaluating its decision in this litigation." (A-B-4)

Thereafter a request for a rehearing was restated along with the suggestion of a desire for a consideration of a rehearing en banc on the basis of the "apparent conflict in this Court's decision with the principles of Swann, supra." And then finally the court was requested that any action on the petition be stayed pending the Supreme Court's decision in *Spangler*.

WHEN IS THE DISTRICT COURT'S SUPERVISION NO LONGER REQUIRED?

After 15 years of litigation, the plaintiffs are seeking a completely new plan of desegregation for the Chattanooga School System. In essence, the plaintiffs resisted demographic changes that might have been associated with white withdrawal from the school system during the course of implementing the desegregation plan by racial decisions. But now that annexation has provided additional white students in the peripheral areas of the Chattanooga School System the plaintiffs desire to amend the plan for the purpose of continuing their battle for racial balance under any and all circumstances. Results are their only interest.

And this is in a school system that was judicially declared in compliance with the law by the court of appeals in 1967 with the exception of the teacher desegregation aspect. And further, this school system considered itself to be in full compliance (with the exception of teacher desegregation) until subsequent to the *Green* decision in 1968 and more specifically the *Swann* decision by this Court on April 20, 1971 when the affirmative action aspect of the School Board's Constitutional obligation was clearly defined. And yet even after approval by the district court and a two to one decision of the court of appeals, the plaintiffs continue to retain the petitioners in court seeking an amended plan of desegregation.

The plaintiffs' request for a postponement perhaps reflects the hope that this Court might use language in the Pasadena case that would resurrect a continuing effort by plaintiffs in the Chattanooga case. Such could well indicate a concern that the probability of language favorable to plaintiffs' position in the year-to-year adjustment area would have a higher probability of taking place in a case where the school board had lost at the district court level and at the appellate court level. That this speculation could have some reasonable basis in fact encourages CBE to file this Amicus Brief for the purpose of getting the Chattanooga facts before this Court for such assistance as these facts might be.

CBE joins Pasadena in its desire to have clarification in the issues raised in the petition. Action at the district court level is, in the Chattanooga case, the ultimate reality. In each event where an appeal has taken place, CBE has proceeded to implement the district court order. The appellate process has never been used as an excuse for delay. Whatever delay has taken place has only taken place pursuant to the one stay granted by the district court or pursuant to the time that it took for the district court to review the legal interpretations of the Chattanooga Board and make a determination as to the extent which the Chattanooga Board's interpretation was Constitutionally permissible or otherwise.

To the extent possible litigation in this area should be minimized. In any event, termination of litigation at the district court level is highly desirable to the extent that such can be consistent with the Constitutional obligations imposed by *Brown I and II*. If school authorities and the district courts are to meet their responsibility, clarification of the issues set forth in the Pasadena case are badly needed, but these issues must be clarified in terms of the impact upon all school systems and not just the Pasadena School System since the facts in Pasadena are obviously unique to that community.

CONCLUSION

The jurisdiction of the Federal Courts in school desegregation cases exists only because a school board is in default of its constitutional obligations. As long as dual zones were operative the default was obvious and no further proof was needed. The student racial segregation was obvious and complete.

Once the dual zones (creatures of the state) were terminated and school student assignments were made without regard to race, there was a reasonable basis for assuming that a status of compliance had been achieved and default no longer existed. But racial segregation persisted in schools after the dual zones were disestablished. The remedy was inadequate.

The affirmative aspect of the obligation was initially identified in *Green*, supra, and given detail and substance in *Swann*, supra. School authorities moved into areas of racial discrimination outside the scope of state action via creation or maintenance. While the results of private discrimination was reflected in the racial composition of the schools, the basic cause was not state action, but individual decisions. The white students who did not accept their assignments to Riverside and Howard by moving their residences were not committing an illegal act. On the contrary, their parents were exercising a basic American freedom – "Where shall I reside?"

While CBE could terminate dual zones since such were the result of its own action, many other segregation-producing facts were not within the power of CBE to alter. Such have proven to be the practicalities inherent in an area where the reconciliation of public and private needs is involved.

State action is a limiting factor where the constitutional right is concerned. The state has practical limits upon its capability to bring about change. Thus state action is also a limiting factor upon the remedy becoming a reality.

The Chattanooga Board of Education, as Amicus Curiae, urges this Court to provide clarification of the constitutional obligation of school authorities and district courts for such is essential to the quality of the educational opportunity in our public school system. But such clarification should reflect the variety in communities, as well as the varied responses of school boards to their duties under *Brown I and II*.

Respectfully submitted,

RAYMOND B. WITT, JR.

WITT, GAITHER, RICHARDSON, HENNISS & WHITAKER

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Attorneys for the Board of Education of the City of Chattanooga

December 24, 1975.

APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 74-2100

JAMES JONATHAN MAPP, ET AL,
Plaintiffs-Appellants,

v.

THE BOARD OF EDUCATION OF THE CITY OF CHATTANOOGA, ET AL,
Defendants-Appellees.

MOTION FOR REHEARING OR REHEARING EN BANC AND FOR LEAVE TO FILE AMENDMENT TO THIS MOTION OUT OF TIME

Plaintiffs-Appellants, by their undersigned counsel, respectfully pray that pursuant to Rules 2, 26(b), and 40(a), F.R.A.P., this Court enter its Order granting them a Rehearing or Rehearing *En Banc* in this case and also grant them leave to file an Amendment to this Motion out of time and, in support thereof, would respectfully show the Court as follows:

1. The instant appeal is one of numerous appeals and cross appeals involving implementation of a system-wide desegregation decree in the City of Chattanooga School System. It

involves, in part, the implementation of effective desegregation in the High Schools of said System.[1] By this appeal plaintiffs sought, in part, to reverse the Judgment of the District Court approving an ineffective desegregation plan for the High Schools of Chattanooga, and excluding from the operation of the desegregation plan areas annexed to the School System (either after the framing of the decree but before its full implementation, or during the initial stages of compliance therewith) which are overwhelmingly white, when schools serving such annexed areas will thereby have student populations substantially disproportionate to the System-wide racial composition.

2. As said by Judge Edwards, dissenting from the majority Opinion filed 20 October 1975, affirming said District Court Judgment:

> "With all respect for the sincerity of my colleagues, I cannot join the majority opinion, or approve its result. If the majority opinion prevails in this Court and in the Supreme Court, it will establish as law the proposition that approximately 60% of the black children in the high schools of the Chattanooga public school system may be continued forever in complete racial segregation in all black schools which were built as such under state law which required a racially dual school system and which have been continuously segregated as such down to this very moment. I cannot square this proposition with the great command of the Fourteenth Amendment to provide all American citizens "the equal protection of the laws."
>
> *The rule of this case is all the more significant because the smaller numbers, the maturity, and the greater mo-*

[1] A Three-Judge panel of this Court had disapproved and remanded a December 1973 District Court Order effecting realistic desegregation in Elementary and Junior High Schools, resulting in a rehearing *en banc* wherein the action of said panel was reversed and the Elementary-Junior High School Plan was approved. At that time the District Judge had not approved any final desegregation plan for the High Schools. *Mapp* v. *Board of Education of Chattanooga*, 477 F.2nd 851 (Sixth Circuit 1973) cert. den., 414 U.S. 1022 (1973).

> *bility of high school students tend to make practical accomplishment of high school desegregation the least difficult part of the task mandated by Brown* v. *Board of Education of Topeka*, 347 U.S. 483 (1954); *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968) and *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971)" (Emphasis Added)[2]

The majority decision in said October 20, 1975, Opinion of the panel in this case simply cannot be squared with said Opinions of the Supreme Court cited by Judge Edwards in his dissenting Opinion and other Opinions such as *Davis* v. *Board of School Commissioners of Mobile*, 402 U.S. 33 (1971); *Keyes* v. *School District No. 1, Denver*, 413 U.S. 189 (1973) and *Wright* v. *Council of the City of Emporia*, 407 U.S. 451 (1972). Said majority Opinion is also in conflict with other decisions of this Court (*Monroe* v. *Board of Commissioners of Jackson*, (Sixth Circuit 1970) 427 F.2nd 1005, *Monroe* v. *Board of Commissioners of Jackson*, 505 F.2nd 105 (Sixth Circuit 1974); *Monroe* v. *County Board of Education of Madison County, Tennessee* (Sixth Circuit 1974) 505 F.2nd 109; *Newburg Area Council* v. *Board of Education of Jefferson County* (Sixth Circuit 1973) 489 F.2nd 925, *vacated and remanded on other grounds*, — U.S. — (1974); *Brinkman* v. *Gilligan* (Sixth Circuit 1975) — F.2nd —. *Kelley* v. *Metro Board* (CA 6, 1972) 463 F2d 732, cert. denied 409 U.S. 1001.

3. Due to routing difficulties, said Opinion of October 20, 1975, did not reach the New York Counsel of Plaintiffs-Appellants until Thursday, 30 October 1975 and, due to con-

[2] The majority opinion admits that the final plan for high school desegregation from which the black plaintiffs appealed leaves the two formerly black High Schools, Howard and Riverside, established as such during dejure segregation, in the following condition as compared to Brainerd and Chattanooga, the two white High Schools:

	Black Students	White Students
Brainerd High School	39%	61%
Chattanooga High School	43%	57%
Howard High School	99%	1%
Riverside High School	99%	1%

tinual Court commitments in Federal and State Court at Nashville, it has been impossible for said Nashville Counsel to reach the preparation of this Motion prior to the date hereinabove.

WHEREFORE plaintiffs-appellants respectfully pray that this Court enter its Order granting them said Rehearing or Rehearing En Banc in the above entitled appeal and allow this Motion to be amended within twenty days after the date hereinbelow.

Respectfully submitted,

/s/ AVON N. WILLIAMS, JR.
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Attorneys for Plaintiffs-Appellants

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Avon N. Williams, Jr. makes oath that the statements contained in the above Motion are true.

/s/ AVON N. WILLIAMS, JR.

Sworn to and subscribed before
me this 3rd day of November 1975.

/s/ CAROLINE D. HAYNES
Notary Public
Commission Expires: 10-25-76

Certificate of Service

I hereby certify that on the 3rd day of November 1975 I served copies of the foregoing Motion For Rehearing Or Rehearing *En Banc* and For Leave To File Amendment To This Motion Out Of Time, upon counsel for the respective parties herein, as follows:

Raymond B. Witt, Jr., Esquire
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/s/ AVON N. WILLIAMS, JR.

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 74-2100

JAMES JONATHAN MAPP, et al.,
Plaintiffs-Appellants,

v.

THE BOARD OF EDUCATION OF THE CITY OF CHATTANOOGA, et al.,
Defendants-Appellees.

On Appeal From the United States District Court For The Eastern District of Tennessee

AMENDED PETITION FOR REHEAHING AND SUGGESTION OF REHEARING EN BANC

Plaintiffs-Appellants, by their undersigned counsel, respectfully pray that, pursuant to Rule 40(a) of the Federal Rules of Appellate Procedure, this Court enter its order granting them a Rehearing and Rehearing *En Banc* in this case, and, in support thereof would respectfully show the Court as follows:

1. Numerous decisions of the Supreme Court and of this Court (previously cited in our original petition for rehearing amended hereby) have established that school boards have a constitutional duty to eradicate vestiges of their dual system "root and branch" and to implement plans that will "work realistically and work realistically now" to achieve that end. Furthermore, the same decisions have emphasized that a school district's compliance with the requirements of *Brown* v. *Board*

of Education, 347 U.S. 483 (1954) and its progency must be judged by results not promises nor projections. They have stressed that where a board fails using one approach to achieve desegregation, it can satisfy its constitutional duty only by resorting to other feasible, viable and judically-approved techniques to achieve "the greatest degree of actual desegregation."

2. As the facts clearly establish in this case, the Chattanooga Board of Education has *never* altered the one-race, dual character of its high schools. The four high schools at issue here were one-race facilities under the dual system and remain so today. The Board's freedom of choice and geographic zoning plans have glaringly failed to alter the racial compositions of these schools. Nevertheless, it has eschewed, with lower court approval, any reliance upon other judicially-approved remedies such as pairing, clustering, transportation or alteration of feeder patterns from lower grades to the high schools that have proven effective in other districts in satisfying constitutional requirements.

3. This Court has established, by affirming the trial court's approval of a plan that fails to do the job *Brown, supra* mandates, the principle that a board can achieve unitary status without making *any* appreciable change in the character of its schools from their one-race composition under state-imposed segregation. It has given its judicial seal of approval to the proposition that demographic changes and "white flight" can, absent any meaningful desegregation of the system as a result of school board action, convert a dual system to a unitary system.

4. With all due respect, we submit that this Court has, in so doing, violated the spirit and letter of the Supreme Court's decision in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971) where it stated:

> It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither school authorities nor district courts are constitutionally required

> to make year-by-year adjustments of the racial composition of student bodies *once the affirmative duty to desegregate* has been *accomplished and racial discrimination through official action is eliminated from the system. Id,* at 32. [Emphasis added]

We suggest that the foregoing language from the *Swann* decision reflects the Supreme Court's view that *something* must happen — meaningful desegregation — before a system can be declared unitary and the need for "year-by-year" adjustments and judicial oversight ceases. Until meaningful desegregation occurs, year-by-year adjustments may be necessary, the Court seems to envision. Yet this Court has rejected such an approach in this litigation.

5. The issue decided by this Court is presently before the United States Supreme Court in the case of *Pasadena City Board of Education* v. *Spangler*, No. 75-164 *cert. granted* 44 U.S.L.W. 3271 (November 11, 1975). One of the questions presented there is as follows:

> (2) Is school system required to amend its judicially validated desegregation plans to accommodate for annual demographic changes for which it is in no way responsible? *Id*, at 3271.

We respectfully suggest that the Court's decision in the *Spangler* case should clarify the language of *Swann, supra* with respect to the need for "year-by-year" adjustments and provide guidance to this Court in reevaluating its decision in this litigation.

Conclusion

For the foregoing reasons, we respectfully request that the petition for rehearing be granted and that the suggestion of rehearing *en banc* be duly considered in light of the apparent conflict in this Court's decision with the principles of *Swann, supra*. Furthermore, we request that any action on this petition be stayed pending the Supreme Court's decision in *Spangler, supra.*

Respectfully submitted,

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Attorneys for Plaintiffs-Appellants

Certificate of Service

This is to certify that on the 21st day of November, 1975, I served two copies of the foregoing "Amended Petition for Rehearing and Suggestion of Rehearing *En Banc*" upon the following counsel of record by United States mail, postage prepaid:

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Attorneys for Plaintiffs-Appellants

APPENDIX C

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 74-2100 and 74-2101

JAMES JONATHAN MAPP, et al,
Plaintiffs-Appellants (74-2100),
Plaintiffs-Appellees (74-2101),
v.
THE BOARD OF EDUCATION OF THE CITY OF CHATTANOOGA, TENNESSEE, et al,
Defendants-Appellees (74-2100),
Defendants-Appellants (74-2101).

APPEAL from the United States District Court for the Eastern District of Tennessee.

Decided and Filed October 20, 1975.

Before: WEICK, EDWARDS and ENGEL, Circuit Judges.

ENGEL, Circuit Judge, delivered the opinion of the Court in which WEICK, Circuit Judge, joined. EDWARDS, Circuit Judge (pp. 16a-26a), delivered a separate dissenting opinion.

ENGEL, Circuit Judge. This desegregation case is once more before the court,[1] this time on cross-appeals from an order of the district court entered June 24, 1974. That order denied motions filed by both parties to modify or amend an earlier order of the court entered December 18, 1973, directed implementation of the final school desegregation plan previously approved by the court with certain modifications. The December 18, 1973 order provided as well that "[To] the extent the Court has previously given only tentative approval to the High School Zoning Plan, the same is now approved finally."

[1] For previous decisions of this court in this litigation see *Mapp* v. *Board of Education of Chattanooga*, 295 F. 2d 617 (6th Cir. 1961), 319 F. 2d 571 (6th Cir. 1963), 373 F. 2d 75 (6th Cir. 1967), 477 F. 2d 851 (6th Cir. 1973), *cert. denied* 414 U.S. 1022.

Both appeals in effect seek to relitigate all of those same issues which we decided in an en banc decision in this court, reported in *Mapp* v. *Board of Education of Chattanooga*, 477 F. 2d 851 (6th Cir. 1973), *cert. denied*, 414 U.S. 1022 (1973). We there affirmed a final plan of desegregation in all respects except as to the high schools in Chattanooga.

While the district judge had at that time approved the plan as to Kirkman Technical High School, and our affirmance made the same final, District Judge Frank W. Wilson had given only tentative approval to the plan for desegregation for other high schools in the City of Chattanooga, see *Mapp* v. *Board of Education of Chattanooga*, 341 F. Supp. 193 (E.D. Tenn. 1972), being uncertain particularly whether three rather than four general purpose high schools would be feasible or desirable in Chattanooga.

With respect to Judge Wilson's refusal to modify the previous final plan of desegregation, we find that he did not abuse his discretion in so doing, particularly since this court has given its approval of that plan.

Accordingly, we see as the sole issue remaining on this appeal the question of whether the district judge erred in ordering final approval of the tentative plan of desegregation for the Chattanooga high schools.

At the time the tentative plan was proposed, it was anticipated that the zoning for the four high schools would produce a racial balance approximately as follows:

	Black Students	White Students
Brainerd High School	32%	68%
Chattanooga High School	44%	56%
Howard High School	75%	25%
Riverside High School	75%	25%

When, however, the plan was placed into effect in the fall of 1971 rather than having the attendance anticipated, the four high schools experienced the following racial balance:

	Black Students	White Students
Brainerd High School	39%	61%
Chattanooga High School	43%	57%
Howard High School	99%	1%
Riverside High School	99%	1%

While an actual head count had showed that as late as July 1971 there were 393 (29%) white high school students in the Howard High School zone and 311 (29%) white students in the Riverside zone, only ten reported that September to Howard and three to Riverside.

It is the contention of the plaintiffs that a school board's duty in a previously dual and segregated school system cannot be said to have been performed where, after implementation of a plan of desegregation, such an imbalance in the racial mix of the students yet remains. After taking extensive testimony on this issue and on the other issues raised by the parties' motions to amend the earlier judgment, Judge Wilson, in his Memorandum Opinion of November 16, 1973, made the following findings of fact:

> To the extent that the Court has previously given only tentative approval to the high school zoning plan, final approval will now be given that plan. Two high schools, Howard High School and Riverside High School, have not acquired an enrollment of white students as projected by the Board when the plan was proposed in 1971, but rather have remained substantially all black. It was a concern for the accuracy of these projections that caused the Court to initially give only tentative approval to the high school zoning plan. However, subsequent evidence has now demonstrated that changing demographic conditions within the City and other *de facto* conditions beyond the control and responsibility of the School Board, including

> the voluntary withdrawal of white students from the system, have become the causative factors for the present racial composition of the student body in those schools and not the original action of the Board in creating segregated schools at these locations. It should be recalled in this connection that the plan previously approved included provision for students to elect to transfer from a school in which they were in a majority to a school in which they would be in a minority.

While the cause of the departure of white students was disputed, there can be little doubt upon the record that the difference between the anticipated mix and the actual attendance of the high schools when the plan was put into effect was due to a substantial departure of white students from the public schools in Chattanooga, a circumstance which the district judge found to have occurred beyond the control and responsibility of the School Board.

No one who firmly believes in the social and educational value of racial balance in a desegregated school system can help being seriously concerned when such a plan for achieving racial balance does not achieve its objectives on implementation. That such a concern was shared by the district judge is manifest throughout the entire record upon appeal. Nevertheless, the district judge concluded that the demographic changes in the city itself were the cause of the remaining imbalance, a finding which finds support in the record and which we hold is not clearly erroneous.

We are satisfied that, in giving final approval to the high school desegregation plan, Judge Wilson was by no means yielding to irrational concerns over white flight which merely masked inherent Board resistance to integration. To the contrary, he carried out the plan in spite of the apprehended result, and beyond that resisted the defendant Board's further efforts to modify the earlier approved plan for the remainder of the system with this language in his November 27, 1973 opinion:

"The Court is not unsympathetic to the concern expressed by the Board for minimizing the voluntary departure of white students from the system. It must be apparent, however, that this objective cannot serve as a limiting factor on the constitutional requirement of equal protection of the laws, nor as a justification for retaining *de jure* segregation. Concern over "white flight", as the phenomenon was often referred to in the record, cannot become the higher value at the expense of rendering equal protection of the laws the lower value. As stated by the United States Supreme Court in the case of *Monroe* v. *Board of Commissioners,* 391 U.S. 450. . . :

> 'We are frankly told in the Brief that without the transfer option it is apprehended that white students will flee the school system altogether. 'But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of the disagreement with them.' *Brown II* at 300, . . .
>
> "Moreover, it is the 'effective disestablishment of a dual racially segregated school system' that is required, *Wright* v. *Council of City of Emporia,* 407 U.S. 451 . . . not, as seems to be contended by the defendants, the most 'effective' level of voluntarily acceptable 'mixing' of the races." (Footnote omitted)

Having implemented the plan for desegregating the high schools by establishing zones for attendances which were designed to achieve a high degree of racial balance throughout the system, and having provided further for continuance of a majority-to-minority transfer policy, the district judge conceived that he had obeyed the mandate of *Brown* v. *Board of Education of Topeka II,* 349 U.S. 294 (1955) *(Brown II)* and more particularly of *Swann* v. *Charlotte-Mecklinburg of Education,* 402 U.S. 1 (1971). So do we. Presumably, the district judge might have ordered a further realignment when the first plan did not achieve the proper balance ratio, and yet

another if that did not hold. Indeed if such were found to have been required to carry out the constitutional mandate to eliminate the vestiges of a dual system, it would simply have to be done, and we have no doubt the district judge would faithfully have carried out that duty. What he was finally faced with here, however, was rather a more subtle and lingering malaise of fear and bias in the private sector which persisted after curative action had been taken to eliminate the dual system itself. *Swann* v. *Board of Education* recognizes that this latter may be beyond the effective reach of the Equal Protection Clause:

> "Our objective in dealing with the issues presented by these cases is to see that school authorities exclude no pupil of a racial minority from any school, directly or indirectly, on account of race; it does not and cannot embrace all the problems of racial prejudice, even when those problems contribute to disproportionate racial concentrations in some schools."
>
> *Swann* v. *Board of Education, supra,* 402 U.S. at 23

Affirmed.

EDWARDS, Circuit Judge, dissenting. This appeal presents just one significant question: Should we now, under applicable Supreme Court precedent, affirm the District Judge's final order of December 18, 1973, approving a final desegregation order applicable to the Chattanooga high schools?

With all respect for the sincerity of my colleagues, I cannot join the majority opinion, or approve its result. If the majority opinion prevails in this court and in the Supreme Court, it will establish as law the proposition that approximately 60% of the black children in the high schools of the Chattanooga public school system may be continued forever in complete racial segregation in all black schools which were built as such under state law which required a racially dual school system and which have been continuously segregated as such down to this very moment. I cannot square this proposition with the great command of the Fourteenth Amendment to provide all American citizens "the equal protection of the laws."

The rule of this case is all the more significant because the smaller numbers, the maturity, and the greater mobility of high school students tend to make practical accomplishment of high school desegregation the least difficult part of the task mandated by *Brown* v. *Board of Education of Topeka*, 347 U.S. 483 (1954); *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968) and *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

The in banc per curiam opinion of the Sixth Circuit (*Mapp* v. *Board of Education of the City of Chattanooga, Tennessee*, 477 F.2d 851 (6th Cir.), *cert. denied*, 414 U.S. 1022 (1973)) constituted unqualified approval of two previously entered opinions and judgments of Judge Wilson, *Mapp* v. *Board of Education of the City of Chattanooga*, 329 F. Supp. 1374 (E.D. Tenn. 1971); *Mapp* v. *Board of Education of the City of Chattanooga*, 341 F. Supp. 193 (E.D. Tenn. 1972). In these two cases Judge Wilson had approved final desegregation orders concerning the grade schools and junior high schools. Equally

clearly, he had not approved any final desegregation plan for the high schools. As to the high schools, in his first opinion he said:

High Schools

> During the school year 1970-71, the Chattanooga School System operated five high schools. These included four general curricula high schools and one technical high school. Kirkman Technical High School offers a specialized curricula in the technical and vocational field and is the only school of its kind in the system. It draws its students from all areas of the City and is open to all students in the City on a wholly non-discriminatory basis pursuant to prior orders of this Court. Last year Kirkman Technical High school had an enrollment of 1218 students, of which 129 were black and 1089 were white. The relatively low enrollment of black students was due in part to the fact that Howard High School and Riverside High School, both of which were all black high schools last year, offered many of the same technical and vocational courses as were offered at Kirkman. Under the defendants' plan these programs will be concentrated at Kirkman with the result that the enrollment at Kirkman is expected to rise to 1646 students, with a racial composition of 45% black students and 55% white students. No issue exists in the case but that Kirkman Technical High School is a specialized school, that it is fully desegregated, and that it is a unitary school.
>
> While some variation in the curricula exists, the remaining four high schools, City High School, Brainerd High School, Howard High School, and Riverside High School, each offer a similar general high school curriculum. At the time when a dual school system was operated by the School Board, City High School and Brainerd High School were operated as white schools and Howard High School and Riverside High School were operated as black schools. At that time the black high schools were zoned, but the white high schools were not. When the dual school sys-

tem was abolished by order of the Court in 1962, the defendants proposed and the Court approved a freedom of choice plan with regard to the high schools. The plan accomplished some desegregation of the former white high schools, with City having 141 black students out of an enrollment of 1435 and Brainerd having 184 black students out of an enrollment of 1344 during the 1970-71 school year. However, both Howard, with an enrollment of 1313, and Riverside, with an enrollment of 1057, remained all black. The freedom of choice plan "having failed to undo segregation • • • freedom of choice must be held unacceptable." Green v. County School Board of New Kent County, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968).

The School Board proposes to accomplish a unitary school system within the high schools by zoning the four general curricula high schools with the following results in terms of student ratios:

	Black Students	White Students
Brainerd High School	32%	68%
Chattanooga High School	44%	56%
Howard High School	75%	25%
Riverside High School	75%	25%

The plaintiffs have interposed objections to the defendants' high school plan upon the ground that it does not achieve a racial balance in each school. To some extent these objections are based upon matters of educational policy rather than legal requirements. It is of course apparent that the former white high schools, particularly Brainerd High School, remain predominantly white and that the former black high schools remain predominantly black. However, the defendants offer some evidence in support of the burden cast upon them to justify the remaining imbalance. The need for tying the high school zones to feeder junior high schools is part of the defendants' explanation. Residential patterns, natural geographical features, arterial highways, and other factors are also part of the defendants' explanation.

A matter that has given concern to the Court, however, and which the Court feels is not adequately covered in the present record, is the extent to which the statistical data upon which the defendants' plan is based will correspond with actual experience. Among other matters there appears to be substantial unused capacity in one or more of the city high schools. Before the Court can properly evaluate the reliability of the statistical data regarding the high schools, the Court needs to know whether the unused capacity does in fact exist and, if so, where it exists, whether it will be used and, if so, how it will be used. It would be unfortunate indeed if experience shortly proved the statistical data inadequate and inaccurate and this Court was deprived of the opportunity of considering those matters until on some appellate remand, as occurred in the recent case of Davis v. Board of School Commissioners of Mobile, 402 U.S. 33, 91 S.Ct. 1289, 28 L.Ed.2d 577.

The plaintiff has submitted a high school plan with high school zones which the plaintiff's witness has testified will achieve a racial balance in each high school. However, this plan is not tied into the junior high school plan hereinabove approved and the Court is unable to say whether it could be so tied in. Furthermore, the same statistical problem discussed above would appear to exist with regard to the plaintiff's plan.

The Court accordingly is unable to give final approval to a high school desegregation plan at this time. Time, however, is a pressing factor. Pre-school activities will commence at each high school within less than a week, if in fact they have not already commenced. Full commencement of the fall term is only one month away. It is clear that the high schools must move at least as far as is proposed in the defendants' high school plan. Accordingly, the Court will give tentative approval only at this time to the defendants' high school plan in order that at least as much as is therein proposed may be placed into operation at the commencement of the September 1971

term of school. Further prompt but orderly judicial proceedings must ensue before the Court can decide upon a final plan for desegregation of the high schools.

In the meanwhile, the defendants will be required to promptly provide the Court with information upon the student capacity of each of the four high schools under discussion, upon the amount of unused space in each of the four high schools, the suitability of such space for use in high school programs, and the proposed use to be made of such space, if any. In this connection the defendants should likewise advise the Court regarding its plan as to tuition students. Last year almost one-third of the total student body at City High School were non-resident tuition paying students. There is no information in the present record as to the extent the Board proposes to admit tuition students nor the effect this might have on the racial composition of the student body. The Court has no disapproval of the admission of tuition students nor to the giving of preference to senior students in this regard, provided that the same does not materially and unfavorably distort the student racial ratios in the respective schools. Otherwise, the matter of admitting tuition students addresses itself solely to the discretion of the Board. No later than the 10th day of enrollment the defendants will provide the Court with actual enrollment data upon each of the four high schools here under discussion.

Mapp v. *Board of Education of the City of Chattanooga, supra* at 1384-86.

In his second opinion he said:

> Tentative approval only having heretofore been given to the School Board plan for desegregation of the Chattanooga high schools other than Kirkman Technical High School (to which final approval has been given). Further consideration must be given to this phase of the plan. At the time that the Court gave its tentative approval to the high school desegregation plan, the Court desired additional information from the Board of Education as to whether three, rather than four, general purpose high schools would be feasible or desirable in Chattanooga. It now appears, and in this both parties are in agreement, that three general purpose high schools rather than four is not feasible or desirable, at least for the present school year. Having resolved this matter to the satisfaction of the Court, the defendant Board of Education will accordingly submit a further report on or before June 15, 1972, in which they either demonstrate that any racial imbalance remaining in the four general purpose high schools is not the result of "present or past discriminatory action on their part" Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. at 26, 91 S.Ct. at 1281, 28 L.Ed.2d 554 at 572, or otherwise, and to the extent that the Board is unable to demonstrate that such racial imbalance which remains is not the result of past or present discriminatory action, they should submit a further plan for removal of all such remaining racial discrimination, the further plan likewise to be submitted on or before June 15, 1972.
> *Mapp* v. *Board of Education of the City of Chattanooga, supra* at 200.

The opinion and order we now review are quite different, and if approved by this Court and the Supreme Court, would represent both a final approval of the school board's current "plan" for operation of the high schools and holding that the present operation represents desegregation of the previously legally segregated dual high school system.

In the opinion we now review Judge Wilson said:

> The Court is accordingly of the opinion that the defendants have failed to establish either such changed conditions as would render its formerly court-approved plan of school desegregation inadequate or improper to remove "all remaining vestiges of state imposed segregation" or that its newly proposed plan would accomplish that result.
>
> To the extent that the Court has previously given only

tentative approval to the high school zoning plan, final approval will now be given that plan. Two high schools, Howard High School and Riverside High School, have not acquired an enrollment of white students as projected by the Board when the plan was proposed in 1971, but rather have remained substantially all black. It was a concern for the accuracy of these projections that caused the Court to initially give only tentative approval to the high school zoning plan. However, subsequent evidence has now demonstrated that changing demographic conditions within the City and other *de facto* conditions beyond the control and responsibility of the School Board, including the voluntary withdrawal of white students from the system, have become the causative factors for the present racial composition of the student body in those schools and not the original action of the Board in creating segregated schools at these locations. It should be recalled in this connection that the plan previously approved included provision for students to elect to transfer from a school in which they were in a majority to a school in which they would be in a minority.
Mapp v. *Board of Education of the City of Chattanooga*, 366 F. Supp. 1257, 1260-61 (E.D. Tenn. 1973).

Thus, clearly, we now have before us the issue as to whether or not in the Chattanooga high schools previous unconstitutional segregation has been eliminated "root and branch." *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968).

Defendants-appellees accept (as they must) the responsibility of meeting the standard of *Green* v. *County School Board of Kent County, supra*:

> It is against this background that 13 years after *Brown II* commanded the abolition of dual systems we must measure the effectiveness of respondent School Board's "freedom-of-choice" plan to achieve that end. The School Board contends that it has fully discharged its obligation by adopting a plan by which every student, regardless of race, may "freely" choose the school he will attend. The

Board attempts to cast the issue in its broadest form by arguing that its "freedom-of-choice" plan may be faulted only by reading the Fourteenth Amendment as universally requiring "compulsory integration," a reading it insists the wording of the Amendment will not support. But that argument ignores the thrust of *Brown II*. In the light of the command of that case, what is involved here is the question whether the Board has achieved the "racially nondiscriminatory school system" *Brown II* held must be effectuated in order to remedy the established unconstitutional deficiencies of its segregated system. In the context of the state-imposed segregated pattern of long standing, the fact that in 1965 the Board opened the doors of the former "white" school to Negro children and of the "Negro" school to white children merely begins, not ends, our inquiry whether the Board has taken steps adequate to abolish its dual, segregated system. *Brown II* was a call for the dismantling of well-entrenched dual systems tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful resolution. School boards such as the respondent then operating state-compelled dual systems were nevertheless clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch. See *Cooper* v. *Aaron, supra*, at 7; *Bradley* v. *School Board*, 382 U.S. 103; cf. *Watson* v. *City of Memphis*, 373 U.S. 526. The constitutional rights of Negro school children articulated in *Brown I* permit no less than this; and it was to this end that *Brown II* commanded school boards to bend their efforts.[4]

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[4] "We bear in mind that the court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Louisiana* v. *United States*, 380 U. S. 145, 154. Compare the remedies discussed in, *e. g.*, *NLRB* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241; *United States* v. *Crescent Amusement Co.*, 323 U. S. 173; *Standard Oil Co.* v. *United States*, 221 U. S. 1. See also *Griffin* v. *County School Board*, 377 U. S. 218, 232-234.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

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Petitioners,

vs.

NANCY ANNE SPANGLER, et al. . . .,
Respondents,

and

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Brief of Western Regional Office, National Association for the Advancement of Colored People, Amicus Curiae; Brief of Pasadena Branch of the National Association for the Advancement of Colored People, Amicus Curiae; Brief of Pasadena Federation of Teachers (American Federation of Teachers Local 1050), Amicus Curiae; Brief of American Friends Service Committee of Pasadena, Amicus Curiae; and Brief of Pasadena/Foothill Branch of the Greater Los Angeles Urban League, Amicus Curiae.

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INTEREST OF AMICI CURIAE[1]

The Amicus Curiae, Western Regional Office, National Association for the Advancement of Colored People, is Region I of seven (7) regional offices which have been

[1]Letters from counsel for the parties to the action, which consent to the filing of the Brief for Amici Curiae, have been filed with the Clerk of the Court pursuant to U. S. Sup. Ct. Rule 42(2).

established for administrative purposes. The Western Regional Office has administrative control and supervision of nine (9) western states, which includes ninety-three (93) branches with a total membership of approximately 19,000 persons.

The National Association for the Advancement of Colored People (NAACP) was organized over 70 years ago because some Americans denied others basic rights and dignity. Blacks and Whites, who believed in the dignity of the individual came together to pursue that dream. The NAACP continues to pursue a steady course to achieve Dignity and Equality through the courts, the legislatures, education, direct action, voter education and registration, community organization and economic development.

Because of those commitments, the Pasadena case represents one of a series of challenges in the quest to achieve equal educational opportunities for all American children. Since the initial Order to desegregate the Pasadena Unified School District (District), in 1970, the Western Regional Office has observed the increasingly resistant tactics of some elements within the community to the plan for desegregation. The Petition for the Writ of Certiorari represents one of the last of those efforts, it is hoped.

The Pasadena Plan for Desegregation (Pasadena Plan) can be viewed as a model of a comprehensive design to totally eliminate the vestiges of dual school systems and racial discrimination in education. For that reason, the Pasadena Plan must survive.

The Amicus Curiae, Pasadena Branch of the National Association of Colored People has a membership of approximately 800 persons, who are active in all areas of the Pasadena community. This latest appeal represents another effort to discredit and ignore the mandates of the Pasadena Plan and the Decrees and Orders of Judge Manuel Real. The Pasadena City Board of Education (Board) has attempted, through its policies, to frustrate the judicial mandates of Judge Real and to attempt a

resegregation of the schools. The stress, by the Board, on neighborhood schools and freedom of choice as to attendance, is an indication of those attempts.

The Amicus Curiae, Pasadena Federation of Teachers, Local 1050, an affiliate of the American Federation of Teachers, has been an interested party in the Pasadena case since 1968. Membership numbers 250, who are certified, professional teachers in the Pasadena schools. Their involvement ranges from kindergarten through the twelfth (12) grade. Since 1973, when the Board underwent a transformation with the addition of four members who had campaigned against the Pasadena Plan, the organization has continuously expressed a support of Judge Real's Order to Desegregate with the Pasadena Plan. A resolution, to that effect, was submitted to the Board. Positive changes have been observed throughout the school system, not only in academics but in less measurable areas such as attitudes, etc. Consequently, the organization supports all efforts that will continue to provide quality education, to all students, in a totally integrated school system.

The Amicus Curiae, American Friends Service Committee of Pasadena (Friends) is the Pacific Southwest Regional Office for an agency of the Religious Society of Friends (Quakers). The purpose of the organization is to put into practice the tenets of the Quaker faith. The Friends have been in continuous operation for 57 years and has a present full-time staff of more than 500, under a 55-man governing board. All of the work is non-violent and depends upon example and persuasion for its effect in such areas as the relief of war suffering, the furtherance of social justice and individual liberty, and helping to lay the foundations for peace in the world and brotherhood among all.

The Pasadena case is indicative of the concerns of the Friends with public education in the United States. For many years, the organization has worked to encourage public school systems in the United States to be respon-

sive to the needs of all of the nation's youth. The problems which have attended the Pasadena Plan since 1970 represent an integral part of problems on a larger scale with desegregation efforts in the public school system. Therefore, the Friends want to express their concern for the problems which are impeding the provision of quality education to all the children of Pasadena.

The Amicus Curiae, Pasadena/Foothill Branch of the Greater Los Angeles Urban League, with a membership of 150 persons, is dedicated to the improvement of the quality of living for Black people. Total integration of the public school system is an essential ingredient and prerequisite to the provision of equal educational opportunities in the public schools. The organization has consistently supported the Pasadena Plan, and has joined with other organizations and individuals in resisting all attempts to abolish the Pasadena Plan. The present members of the Board have indicated through actions that they have a lack of commitment to the overall purpose of integration of the Pasadena schools. The Board has consistently campaigned throughout the community for a return to the freedom of choice neighborhood plan, which this organization is aware, from prior experience before 1970, is synonymous with segregated schools.

STATEMENT

The Pasadena Plan, as approved by the District Court for the Central District of California in January 1970, represents a comprehensive effort to dismantle a dual school system that had been adjudged representative of de jure segregation. Not only was the plan comprehensive in its scope, but it had the intent of totally desegregating the system at one time with a massive reassignment of students so that no school had a majority of minority students. The plan dealt with attendance zones, assignment of students, intergroup assignments, faculty, staff, administrators, selection of construction sites, etc.—the whole range of school administration.

Immediately after the Pasadena Plan was ordered to be implemented, certain elements within the Pasadena community began a campaign to defeat the purposes of the plan and to maintain the neighborhood school system. The efforts of those elements came to fruition when four of the five members on the Board were replaced by individuals who had actively campaigned for the elimination or modification of the Pasadena Plan. Since the change in the composition of the Board, the Board has engaged in a series of dilatory tactics, which appear to have the primary purpose of frustrating the total implementation of the Pasadena Plan. Other tactics have led the Board into a position of a finding of contempt of the District Court. The most pervasive and dilatory tactic, has been the persistent effort to obtain a legal reversal of the Decree which ordered the implementation of the Pasadena Plan. The Petition for the Writ of Certiorari to the Ninth Circuit of the United States of America, represents the latest of those efforts.

In spite of extensive findings of de jure segregation in the District Court, the Board persists in a posture of innocence. At this time, it is alleging there were no affirmative acts or policy to operate a segregated school system or to frustrate the intent of the Pasadena Plan. The original decrees of the District Court, which found de jure segregation and which ordered desegregation were never appealed. The Circuit Court has affirmed all findings and judgments of the District Court on those issues which have been appealed to that court; and those affirmations were based on narrow grounds which did not go to the initial findings of de jure segregation. However, the Board is now challenging the merits of the original decrees and the validity of those decrees and the Pasadena Plan on constitutional grounds.

A review of the pleadings and briefs, in the lower court proceedings and those filed in this Court, will reveal a mischaracterization of the opinions which have been rendered by the District Court and the Court of Appeals. Through a clever and unusual scrambling of bits and pieces

from various constitutional arguments and opinions of this Court, the petitioners have distorted the realities of this case. The petitioners contend that they have been in compliance with prior Court Orders and that the District has Unitary status, when there are extensive findings to the contrary. The petitioners contend that the District Court has violated constitutional safeguards and abused the discretion of the court, when there are extensive findings to the contrary.

It is the concern of the Amici that if the court grants the relief sought by the petitioners that (1) the Pasadena Plan, a magnificent model for comprehensive and total integration of public schools will be destroyed, and (2) other desegregation efforts throughout the United States will be confused by what would appear to be a departure from prior holdings as to the substantive content of the Fourteenth Amendment as it affects racial segregation in education.

FACTS AND PROCEDURAL HISTORY

This action was originally instituted on August 28, 1968, by certain Pasadena public school children and their parents as a class action against the Board of the District and certain officials thereof, seeking injunctive relief from alleged unconstitutional segregation of its public schools. The United States Government, also endeavoring to eliminate the discrimination, was permitted to intervene as a party plaintiff on December 4, 1968. On January 23, 1970, after a nine-day trial, the District Court entered its Decree, enjoining the Board and the Superintendent of Schools "from discriminating on the basis of race in the operation of the Pasadena Unified School District." *Spangler* v. *Pasadena City Board of Education*, 311 F.Supp. 501, 505 (C.D. Cal.1970). The court required the Board ". . . to prepare and adopt a plan to correct racial imbalance at all levels", and further directed that "[t]he plan shall provide for student assignments in such a manner that, by or before the beginning of the school year that commences in September

of 1970 there shall be no school in the District, elementary or junior high or senior high school, with a majority of any minority students." 311 F.Supp. 501 at 505.[2]

In support of the 1970 Decree from which the appellants now seek relief, the District Court found that the Board had adopted a neighborhood school policy and a policy against forced cross-town busing which resulted "in racial imbalance and increasing racial imbalance." *Id.* at 506. Among the facts supporting the court's conclusion that the Board's policy violated the Fourteenth Amendment were findings that: (1) in numerous instances the Board changed attendance areas, changes having the net effect of increasing the percentage of blacks in schools that were already "black" and, correspondingly, increasing the percentage of whites in "white" schools, (*Id.* at 506-509); (2) the Board had consistently rejected proposals from its superintendent, citizens' committees, and other Board members that would result in significantly more racial integration, (*Id.* at 510); (3) the Board "used transportation provided at school district expense to make it possible for white children to avoid attending schools with greater percentages of black students enrolled than in the District as a whole", (*Id.* at 512); (4) very few black teachers were hired and most were assigned to schools with majority black enrollment (*Id.* at 513-516); (5) there was discrimination in the hiring and promotion of black administrators, (*Id.* at 516); (6) the Board placed transportable classrooms at black schools to accommodate over-enrollment at those schools while adjoining white schools had fewer transportables or none at all, (*Id.* at 518); and (7) the Board granted transfers "[which it] knew or should have known were wholly or at least in part motivated by racial considerations, including baseless trans-

[2]A majority of the Board voted not to appeal the District Court's original Decree. Thereafter a group of parents filed a motion in the District Court for leave to intervene as defendants for the purpose of perfecting an appeal. The motion was denied on March 4, 1970, and the movants appealed to this court. On June 15, 1970, the Court of Appeals affirmed, *Spangler* v. *Pasadena City Board of Education*, 427 F.2d 1352 (9th Cir. 1970).

fers that had the effect of intensifying racial segregation in the Pasadena schools", (*Id.* at 520). Additionally, the court found that during the 1969-70 school year, 85 percent of the District's black elementary school students attended the eight majority black elementary schools, while 93 percent of its white elementary students attended the remaining 21 elementary schools, (*Id.* at 507).

Pursuant to the court's Decree a comprehensive desegregation plan (commonly called the "Pasadena Plan") was formulated by a task force consisting of various employees of the District, under the direction of the Superintendent of Schools. The District, although relatively small geographically, includes the city of Pasadena, the city of Sierra Madre, the town of Altadena, and various portions of Los Angeles County. Under the Pasadena Plan, as approved by the District Court on March 10, 1970, the District was divided into four ethnically balanced areas. Students are assigned to the schools in the area of their residence "in such a way as to develop an ethnic balance in each school", while retaining at the elementary level the concept of the neighborhood school by permitting students to "walk to a nearby school for part of their elementary schooling and be transported as a neighborhood to another school" for the remainder. The plan created primary schools covering grades kindergarten through third (K-3) and elementary schools covering the fourth through sixth (4-6) grades to replace the old concept of the neighborhood school encompassing kindergarten through the sixth grade (K-6). The plan altered the secondary school structure by shifting the ninth grade from the junior high schools to the senior high schools. Ethnically balanced secondary school attendance zones were drawn in a fashion that prevented any secondary school from having a "majority of any minority students." The plan provided for transportation for all students who attend school outside their normal areas, and students were permitted to transfer from their assigned schools to other schools in cases of "urgent hardship" involving considerations of curriculum, family circumstances, or medical-psychological factors.

At the commencement of the 1970-71 school year the Pasadena Plan was implemented, and it has ostensibly remained in effect since that time. On January 15, 1974, the motion which is the subject of this appeal was filed by the Board, now having a majority of newly elected members. A hearing on the motion was conducted on February 25, 26, 27 and March 1, 1974. On May 15, 1974, the District Court entered its opinion and order denying appellants' motion in its entirety. The District Court refused the requested relief from its Order of January 23, 1970, in view of the opposition which the Pasadena Plan had encountered and the fact that beginning in 1971, only a few months after the supposed implementation of the original plan, the District had violated the "no majority of any minority" portion of the injunction. By the time of the hearing in March, 1974, five Pasadena schools were operating in violation of the no majority of any minority portion of the court's injunction.[3] *Spangler* v. *Pasadena City Board of Education,* 375 F.Supp. 1304, 1306 (C.D.Cal.1974). The court further found that the Pasadena Plan had not been accorded such cooperation from the Board as would permit an assessment of its educational success or failure. (*Id.* at 1308); that the decline in white enrollment relative to total enrollment in Pasadena

[3]As of the beginning of the 1973 school year, the Pasadena Unified School District operated 32 regular schools, having an enrollment of approximately 44 percent Anglo-Caucasians and 40 percent blacks. At the time of the initial implementation of the Pasadena Plan (1970-71) every school in the District was in literal compliance with the court's order. No school had a Negro enrollment as high as 50 percent, and in only three schools was the Negro enrollment greater than the Anglo-Caucasian enrollment. In the 1971-72 school year, one school (Loma Alta) slipped out of compliance with the no majority of any minority standard. In 1972-73 four schools, in violation of the court's order, had a black enrollment in excess of 50 percent, and in seven other schools the black enrollment exceeded that of Anglo-Caucasian students. By 1973-74, five schools were in violation of the court's order (Franklin, Sierra Mesa, Edison, Loma Alta, and Eliot), and sixteen others had a Negro enrollment exceeding that of Anglo-Caucasians.

Schools since 1970 was not caused by the desegration Order, since the decline closely approximated state-wide trends in California, (*Id.* at 1306); that the Alternative Plan was essentially a freedom of choice plan like those which had failed to desegregate Pasadena schools in the past, (*Id.* at 1311); and that it was unrealistic to believe that parents who fled the district because their children were forced to attend school with black children would now voluntarily choose that alternative under the Alternative Plan, (*Id.* at 1308).

SUMMARY OF ARGUMENT

Petitioners, in an untimely presentation, are asking this Court to review and invalidate the Decrees and Orders to Desegregate, which Judge Manuel Real, Central District Court of California, mandated in January and March of 1970, six years ago. Those Decrees and Orders were never appealed, at that time, for review. Yet, Petitioners, as an adjunct of a review of the Ninth Circuit Court of Appeals judgment of May 5, 1975, would seek a review of the validity and scope of those Decrees and Orders. This request is contrary to well established rules of this Court.

The Ninth Circuit Court of Appeals reviewed, narrowly, Judge Real's ruling on a four-part motion to dissolve an injunction, terminate jurisdiction over the Board and in the alternative, to allow modification of the Pasadena Plan. The Court of Appeals found that Judge Real had not erred in his findings, and was within the remedial and equitable discretions of his court. However, Petitioners, through a mischaracterization of the facts and findings, are alleging to the contrary.

There is the issue of Unitary status of the District, and whether or not the Board has complied with the mandates of the District Court. The evidence in the lower proceedings and the findings of the lower courts are clearly indicative that the Board *has not fully complied* with the Orders of the District Court. Without such compliance, the District cannot attain Unitary status and declare itself free of the vestiges of a dual school system and racial segregation. Such status can only be attained through findings of the court with jurisdiction over the Board. Judge Real has made no findings of this nature; to the contrary, he has found the Board in contempt of Court.

From the evidentiary findings of the lower courts, particularly the District Court, and the persistence of the Board in resisting the mandates of that court, there are serious questions of good faith. Without alleging bad faith on the part of the Board, the record is ample to indicate a lack of good faith. The tortious litigation which the Board has pursued, by means of its learned counsel, is indicative of more than seeking clarification through channels of appeal. Distortions of court opinions, constitutional standards and the facts in this matter are strongly indicative of deception, and a misuse of this Court and other courts for purposes of delay and frustration of the Pasadena Plan.

Amici have all lived closely with the developments of this litigation since 1968. All of the individuals and associations are desirous of a period of peace, cooperation and affirmative action in order to give the Pasadena Plan an opportunity to achieve its envisioned objective. The design of the Pasadena Plan was so comprehensive in scope and timetable that it could serve as a model for school districts everywhere. However, this success would require cooperative effort from all elements of the Pasadena community, and particularly the Board. That cooperation has been missing in past years.

Our students in Pasadena are the real objectives of this litigation and the Pasadena Plan. They are the beneficiaries, or victims, of whatever is resolved. Those students have expressed their confidence in the Pasadena Plan and their willingness to study under its provisions. This expression is indicated through a lack of disciplinary problems and conflicts within the student body. Also, those

students have affirmatively expressed themselves, in court, during the course of this litigation. Their voices have said:

> We think the Pasadena Plan will work, it is working and all of the students are benefiting from the experience—academically and culturally.

Let us listen to our children. They are ones for whom these battles are being fought. Everyone claims that they are seeking a quality educational experience for all students in public schools.

It is the position of Amici that such an experience exists in Pasadena under the Pasadena Plan. We ask the Court to allow our experiment to continue *for the betterment of all of us.*

ARGUMENT

I. Questions presented Nos. one (1), two (2) and (4), in the petition for a Writ of Certiorari, were not issues on appeal to the Court of Appeals for the Ninth Circuit and are therefore not properly before this Court.

Question Presented No. 1 Is a judicial decree valid which requires a fixed racial balance for all schools within a school system?

Question Presented No. 2 Is a school system required to amend its judicially validated desegregation plan to accommodate for annual demographic changes for which the school system is in no way responsible?

Question Presented No. 4 Does a decree imposing racial balance preclude a school board from acting to prevent the school system from becoming an all-minority system?

It is a well settled rule, that issues which are neither raised before nor considered by the Court of Appeals will not ordinarily be considered by this Court. *Adickes* v. *S. H. Kress & Co.* (1970), 398 U.S. 144, *Lawn* v. *United States,* 355 U.S. 339, 362-363 (1958), *Husty* v. *United States,* 282

U.S. 694, 701-702 (1931), *Daigan* v. *United States,* 274 U.S. 195, 200 (1927).

The substance of the Questions presented deals with the validity of the Pasadena Plan, as approved by the District Court and the January 20, 1970 and March 10, 1970 Orders directing the implementation of the Pasadena Plan. Additionally, Question No. 4 raises an issue as to the limits of the Orders of the District Court as to any prohibitions on certain actions of the Petitioners. The Petitioners did not appeal the Orders of the District Court of January 20, 1970 and March 10, 1970 and no issues as to the validity of those Orders, or their scope, were raised during the proceedings which are subject to review before this Court.

In *Spangler* v. *Pasadena City Board of Education (74-2116),* 519 F.2d 430 (9th Cir. 5-5-75), Circuit Judge Ely stated at 431 *Ibid.*:

> It is important at the outset to understand the narrow ambit of our review, a constriction resulting from the procedural posture in which this appeal is before our court. *Neither the Pasadena Plan nor the District Court's January 23, 1970 and March 10, 1970, Orders directing the implementation of the plan are here on direct appeal.* (Emphasis added.) Nor are we concerned with the correctness of the District Court's original decision in *Spangler* v. *Pasadena City Board of Education,* 311 F. Supp. 501 (C.D. Cal. 1970), and the conclusions drawn therein. The only question before us now is whether the District Court erred in its determination, in denying appellants' 1974 motions, that events and circumstances occurring and existing in Pasadena since the Pasadena Plan was ordered implemented do not justify relief from the January 23, 1970, Decree, relinquishment of the court's continuing jurisdiction over the Board, or the substitution of a substantial alteration of the original Pasadena Plan.

Additionally, Circuit Judge Chambers (concurring opinion), *Id.* at 440, stated:

> Had the first Pasadena decree (Orders of January 23, 1970 and March 10, 1970) been appealed to conclusion . . . But the appeal was dropped. So the school board was left under a continuing duty to homogenize and they have not done it beyond the first massive reassignment of pupils.

Petitioners should not be granted the opportunity to raise the issues, as to the validity of the Orders of January 23, 1970 and March 10, 1970 or as to the scope of those Orders, before this Court for the first time.

The same reasoning should apply to the exclusion of petitioner's arguments as to mootness of the action (Brief 23). This issue is untimely, and the petitioners have never raised the issue, at any time, in any of the lower court proceedings.

II. The Pasadena Unified School District is not a Unitary System in that the Board has not fully complied with the Decrees and Orders of the District Court of January 23, 1970 and March 10, 1970 and therefore must continue under the jurisdiction of the Trial Court until such compliance occurs.

Petitioners argue that the District is and has been a unitary system since 1970. That conclusion follows from their reasoning that "the Pasadena Plan effected integration in one fell swoop" and "Since the institution of that plan, the Pasadena system is and has been one 'within which no person is . . . effectively excluded from any school because of race or color.' (Citations omitted)". Thus, the petitioners argue that by this standard the District became a unitary system at the time of the implementation of the Pasadena Plan and that it has maintained that status because of the aforementioned ongoing condition. It is the

position of amici that not only is the above erroneous and fallacious reasoning, but leads to an erroneous conclusion.

A. The Pasadena Unified School District is not and never has been a Unitary System, when measured by standards enunciated by this Court.

The petitioners have failed to acknowledge that the status of a unitary system is a matter of a finding of fact by the trial court, which has jurisdiction, and that finding of fact will occur after compliance with a well defined process. That process includes (1) the adoption of a constitutionally acceptable desegregation plan, (2) an evaluation of that plan in practice by the trial court to assess the effectiveness of the plan in the achievement of desired objectives, and (3) a finding by the trial court that state imposed segregation has been completely removed.

Step (2) of the above process requires an affirmative action on the part of the Board to assist in the evaluation and to accomplish the implementation. This process has been set forth in standards established by this Court to guide the lower courts in their jurisdiction and review of desegregation cases.

In *Green* v. *County School Bd. of New Kent Co., Va.*, 391 U.S. 430 (1968), this Court stated at 439:

> It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. Where the court finds the board to be acting in good faith and the proposed plan to have prospects for dismantling the state-imposed dual system 'at the earliest practicable date,' then the plan may be said to provide effective relief.

This step is in the process towards status as a unitary system, according to the above standard, *has been* com-

pleted through compliance in the adoption of the Pasadena Plan by the District Court by Decree and an Order for Implementation on March 10, 1970.

However, the remaining two steps in the process towards status as a unitary system have never been completed because of lack of compliance by the Pasadena School Board. The standard for these two steps was enunciated in *Green, Id.* at 439.

> Moreover, whatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed. (Citation omitted).

Further, in *Raney* v. *Board of Education of Gould Sch. Dist.*, 391 U.S. 443 (1968), this Court stated at 449:

> We agree with the observation of another panel of judges of the Court of Appeals of the Eighth Circuit in another case that the district courts "should retain jurisdiction in school segregation cases to insure (1) that a constitutionally acceptable plan is adopted, and (2) *that it is operated in a constitutionally permissible fashion so that the goal of a desegregated, non-racially operated school system is rapidly and finally achieved.*" (Emphasis added). *Kelly* v. *Altheimer*, 378 F.2d 483, 489 (1968). See also *Kemp* v. *Beasley*, 389 F.2d 178 (1969).

This Court has been quite definitive in these standards and guidelines to the district courts for the disestablishment of segregated school systems. Such a standard is not at issue here. What is at issue is whether the Pasadena School District has ever achieved the status of a unitary system according to those standards.

It is the position of the Amici that the District has not achieved the status of a Unitary System because of non-compliance with the Decrees and Orders of the District Court.

B. The Pasadena City Board of Education and the Pasadena Unified School District have not fully complied with the Decrees and Orders of the District Court.

In *Spangler* v. *Pasadena City Board of Education*, 311 F. Supp., *supra*, District Judge Real rendered the following, as part of the Judgment in that case, at 505:

> The Court retains jurisdiction of this cause in order *to evaluate the plans and the execution of the plans* of the District in regard to the hiring, promotion, and assignment of teachers and professional staff members, the construction and location of facilities, and the assignment of students.

As to the assignment of students,[4] the District Court had further ordered, Id. at 505:

> . . . . that, by or before the beginning of the school year that commences in September of 1970 there shall be no school in the District, elementary or junior high or senior high school *with a majority of any minority students.* (Emphasis added).

The failure of the District to comply with the Decrees and Orders of the District Court[5],

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[4]Amicus would like to focus for the Court that the central thread throughout the *Spangler*, supra, proceedings has been the assignment of students. The District Courts' judgment and Order, above, envisioned the assignment of students as a central and major element in the effected remedy. The Pasadena Plan had as the major core of the plan, the redistricting of attendance zones and the assignment of students. The non-compliance of the Pasadena City Board of Education centered on the assignment of students in that the Board failed to evaluate the racial mix of the individual schools in view of reassignment, if necessary, of students in order to comply with the "no majority of any minority" decree. The Integrated Zone/Educational Alternatives Plan, A Proposed Modification to the Pasadena Plan, is a direct attack on the court approved and decreed assignment of students in that it would substitute "the neighborhood school policy" and the "freedom of choice" for school attendance within four ethnically balanced zones within the school district.

[5]The lack of good faith of the Pasadena Unified School District is primarily a result of the expressions made publicly and the contemptuous and indifferent administration of the District. See N. 7, at 29.

is evident from the following which were deemed as findings of fact in *Spangler* v. *Pasadena City Board of Education*, 375 F. Supp, *supra*.

at 1305:

> While no appeal was taken from that ruling (Order of Desegregation and Implementation of Pasadena Plan) (Editorial comment added), it was, to say the very least, not received with unanimous approbation.
>
> . . . . opposition to the Pasadena Plan came early. The Plan had not yet been approved when on March 2, 1970, a Motion for Leave to Intervene to oppose and appeal the judgment of this Court was filed, ...

at 1306:

> Only temporarily rebuffed, those who were determined that the Pasadena Plan would not succeed carried on their crusade. In April of 1970 (five months before the Pasadena Plan was to be implemented), a recall campaign against the three members of the Board who had voted against appeal of this Court's judgment was commenced. With the pledge to "STOP FORCED BUSING", Frank C. Crowhurst, Richard W. Millar, Jr., and Henry Marcheschi (past president of the Board of the District) unsuccessfully attempted to unseat . . . . (Editorial comment added)
>
> Implementation of the Pasadena Plan was accomplished with the commencement of the 1970-71 academic year in September of 1970. However, compliance was literal for only the first academic year; . . . . See n. 3, *supra*, at 9.

at 1308:

> Aside from the contrary evidence introduced by plaintiff-intervenor to show some education progress, it takes little educational expertise to recognize that the Pasadena Plan has not had the cooperation from the Board that permits a realistic measurement of its educational success or failure. No one can now estimate the possible results of the Pasadena Plan had it enjoyed the continued support of a Board who would act, as they profess, to 'do unto others as you would have them do unto you.' ***As such, the Board has not met its burden in any way sufficiently to have this Court rule upon this issue*** (educational value of Pasadena Plan and its educational success or failure) (Editorial comment and emphasis added)

at 1309:

> Modification of the injunction of this Court of January 23, 1970, would, in effect, leave the Board to its own devices concerning the Pasadena Plan and its continued viability as a mandate for desegregation. To grant such relief would—in light of the avowed aims of four members of a five-member Board—surely be to sign the death warrant of the Pasadena Plan and its objectives.

Circuit Judge Chambers, in the concurring opinion to the Ninth Circuit Court of Appeals review of *Spangler*, as cited above, found that because the Pasadena City Board of Education had failed to appeal the Order to Desegregate and implement the Pasadena Plan, the Board was under a continuing duty to homogenize the District, which they had not done after the first massive assignment in 1970. The Court of Appeals through their affirmation of the judgment of the District Court, has found that the Board was not in compliance with the Orders of the District Court. Circuit Judge Ely stated in *Spangler*, 519 F.2d 430, at 438:

> In light of the School District's *failure to comply* with the 'no majority of any minority' requirement for three successive years, and the fact that appellants sought to substitute a 'freedom of choice' type of plan that the court found would likely result in resegregation, it was reasonable for the District Court to conclude that all vestiges of de jure segregation had not been eliminated.

From the above, it is the position of the Amici that sufficient findings of facts have been established as to the failure of the Pasadena City Board of Education to comply with the Orders of the District Courts. On appeal and review to the Ninth Circuit, that Court has found the findings of the District Court reasonable, within the discretion of the court and not clear error.

Additionally, it is significant that the Board has been found in contempt of court for failing to carry out the provisions of the Pasadena Plan in the area of the selection of administrators. This Court recognized in *United States* v. *Montgomery County Board of Education* (1969), 395 U.S. 225, 231-2, that to achieve "a public school system wholly free from racial discrimination" desegregation of the staff is an important ingredient." The Pasadena Plan approved by the court on March 10, 1970, included specific provision for the hiring and promotion of administrative personnel and the Plan provided for a positive effort to be made to attract and recruit minority administrators to the District. The plan required that all applicants, who met the minimum eligibility requirements were to be admitted to an examination and that all appointments had to be approved by the Superintendent.

None of those procedures was followed by the Board. On July 10, 1973 (three years after the Order to Desegregate), the Board, on a 3-2 vote, appointed three new administrators. Two Acting Assistant Superintendents and an Acting Director of Elementary Curriculum were appointed without notice and without approval of the Superintendent; and all, predictably, were Caucasian. Thereafter, on July 31, 1973, with only Mr. Samuel Sheats objecting, the Board appointed two Caucasian principals; also, without following the recruitment procedures outlined by the Pasadena Plan. To the extent that they thought they were able, the present Board members continued in a way which

had brought about the institution of this case in August 1968. This matter of contempt is presently on appeal before the Ninth Circuit Court of Appeals (No. 74-2530).

Given the findings of failure to comply with the District Court's Orders and Decrees, it is evident that the Pasadena school system has not attained the status of a unitary system.

C. Since the Pasadena Unified School District has not fully complied with the Orders and Decrees of the District Court, and is therefore not a Unitary System, the District Court should retain jurisdiction until such compliance occurs.

The contention of petitioners that "population shifts that have caused minor variants in attendance ratios in Pasadena cannot be considered either to have been violations of the original decree or as destroying the unitary nature of the system created in 1970" (Brief 18 para. 2), is an erroneous assessment of the non-compliance, as outlined above. As this Court stated in *Green, supra,* 391 U.S. at 437-438 there is an "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." (Citations omitted.) It is this affirmative duty and burden which the Pasadena City Board of Education has failed to satisfy. Implementation of the Pasadena Plan was the beginning of a process to dismantle the dual school system in Pasadena. Without an ongoing evaluation by the District Court as to the effectiveness of the Pasadena Plan to accomplish its objective, it could not by its initial implementation meet the standard of affirmative duty in *Green*. The petitioners fail to address the fact that their failure to take affirmative actions after the implementation of the Plan appears to be the main cause of the trend of the District back towards resegregation. It is that failure to which the District Court has addressed itself, and the Court of Appeals affirmed on appeal and review.

Without such affirmative duty and compliance, the mandate of this Court in *Green* and *Raney, supra,* must apply that the District Court should retain jurisdiction until it is *clear* that state-imposed segregation has been completely removed.

Also, in *Green, supra,* this Court found that District Courts have not merely the power, but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past *as well as bar like discrimination in the future.*

To the end of barring like discrimination in the future, the District Court must maintain jurisdiction so that the operation of the desegregation plan will indicate what future effects will occur with continued operation of that plan. Any modifications to the original decree must come after a reasonable period of observation and evaluation.

That is not the situation in this case before the court. Very little affirmative action has occurred so that the District Court could properly evaluate the effects of the Plan. On the contrary, Judge Real of the District Court found evidences of obstruction and counterproductive efforts on the part of the Board. The efforts of that Board to implement the "freedom of choice" plan as a modification when all reasonable efforts had not been made to insure the total implementation of the Pasadena Plan, is an example of such counterproductive efforts.

Given the findings of the lower courts and the standards of this Court, for conversion to unitary systems, the Court should find that both the District Court and the Court of Appeals properly denied the motion for the dissolution of the District Court's injunction and for the termination of the District Court's continuing supervision over the actions of the Board.

III. In the event this Court finds that the issues of the validity and scope of the District Court Orders and Decrees of January 23, 1970 and March 10, 1970 are properly before this Court, then the "No Majority of Any Minority" and "Annual Reassignment of Students, if necessary" requirements, are not rigid mandates for racial balance but rather are valid elements of the Orders and Decrees.

Petitioners contend that this Court, since 1970, has made it abundantly clear that racial balance is not a proper formula for a desegregation decree. (Brief 13, para. 2.) To support that contention, the petitioners cite language from *Swann* v. *Board of Education* (1971), 402 U.S. 1, 24, 31-32. It is the position of Amicus that the petitioners have cited the rulings of *Swann, supra,* in part, out of context and without their proper and total interpretation.

In *Swann, Id.,* at 25, this Court ruled that a very limited mathematical ratio was within the equitable use made of remedial discretion of the District Court. The court found that the District Court's finding of substantial history of dual school and recalcitrance on the part of the School Board in the establishment of a desegregation plan, made the use of mathematical ratios no more than a starting point in the process of shaping a remedy, rather than a rigid and inflexible requirement of racial balance or mixing. It is important to note that in *Swann,* the above ruling was based on the finding of facts which satisfied two criteria (1) a substantial history of dual schools, and (2) recalcitrance and reluctance on the part of the School Board.

Those criteria are satisfied by the facts in *Spangler.* The District Court has made extensive findings of a substantial history of dual schools and policies of the Board which reinforced and continued that dual system.

Additionally, the majority of the Board which approved the Pasadena Plan were constantly under attack from 1970 until 1973 when they were replaced for the most part. An atmosphere of political hysteria, political attack and po-

litical obstruction was conducted by a credible segment of the Pasadena community to prevent implementation of the Pasadena Plan from the time of its design and conception, and prior to implementation, which continues until this day. Some of those persons, including Mr. Marcheschi, a past president of the Board, were a controlling majority of that Board and they have been since March 1973. Their avowed political aim has been to dismantle the assignment of students and to return to the neighborhood school system and freedom of choice, which had previously failed for a decade to effect desegregation of the Pasadena schools.

With those facts in the *Spangler case,* the similarity to *Swann* is sufficient to justify the District Court's use of the "no majority of any minority" ratio to serve as a starting point in the process of shaping a remedy. That Court's continued insistence upon the ratio should be viewed as a continuing effort to offset the recalcitrance, resistance and reluctance of the Pasadena City Board of Education.

It is the opinion of Amici, that the "no majority of any minority" ratio of *Spangler* is not inconsistent with the ruling of this Court in *Swann.*

As to the annual reassignment of students, the language of *Swann* is not inconsistent with that requirement of the District Court. The Court ruled, 402 U.S., *supra,* at 32 that school authorities nor district courts were required to make annual adjustments of the racial composition of student bodies *once the affirmative duty to desegregate has been accomplished* and racial discrimination through official action has been eliminated from the system. It has been adequately found by the District Court, and affirmed by the Court of Appeals that such is not the situation in this case. The District is not in compliance with the Orders and Decrees of the District Court and the District has not yet achieved unitary status. Therefore, the affirmative duty to desegregate *has not yet been accomplished,* and the above ruling of *Swann* would be inapplicable to this case.

The above requirements are still within the remedial and discretionary powers of the District Court.

IV. The District Court's rejection of the "Freedom of Choice" Neighborhood School Plan was based on sufficient findings and was within the remedial discretion of that Court.

The District Court found the "freedom of choice" alternative plan to the Pasadena Plan inadequate for the following reasons (1) that it was unreasonable conjecture to presume that white parents and students who have moved out of the Pasadena Unified School District during the implementation of the Pasadena Plan would now voluntarily return under the Alternative Plan to attend desegregated schools, (2) that the Board failed to prove any connection between the Pasadena Plan and the "white flight" from the district, (3) that the educational opportunities presented by the Alternative Plan were not proven by the evidence presented to be equal to, or superior to, those educational opportunities under the Pasadena Plan, (4) that the Board failed to prove that the Pasadena Plan was not succeeding educationally, but, to the contrary plaintiff-intervenor (United States) introduced evidence to prove some educational progress, and (5) that there was no fiscal advantage to the Alternative Plan in that it would require as much busing or more than the Pasadena Plan.[6]

The Court of Appeals reaffirmed those findings in holding that the District Court did not abuse its discretion in justifiably finding the Alternative Plan as unlikely to achieve the constitutionally required Unitary School system in Pasadena.

This Court held in *Green, supra,* at 439:

> The obligation of the District Courts, as it always has been, is to assess the effectiveness of a proposed plan in

[6]See Prof. I. Goodman's extensive analysis of neighborhood schools, freedom of choice, residential segregation and state action. 60 Cal L R, Vol. 275 (March 1972), 298 et seq.

achieving desegregation. There is no universal answer to the complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance. .... It is incumbent upon the district court to weigh ..... in light of any alternatives which may be shown as feasible and more promising in their effectiveness .....

It is the position of Amici that the findings of the District Court, as affirmed, were within the discretion of that Court within the rule set forth in *Green, supra*. The District Court assessed the Alternative plan and found it less sufficient, as an alternative to the Pasadena Plan.

Petitioners contend that the Alternative Plan was rejected as a modification to the Pasadena Plan, because (1) the proposed amended plan would not maintain the racial balance quotas, and (2) the proposed plan involved freedom of choice, and was therefore, inadequate. (Brief 21 para 1, 22 para 1). In support of their contentions, petitioners argue that the ruling of this Court in *Wright* v. *Council of the City of Emporia*, 407 U.S. 451 (1972) was "that the absence of racial balance was not a bar to the validity of an amended desegregation plan. (Brief 21).

The facts in *Wright, supra*, were that of a city, which had shared-cost with the county to use the county public school system. That share-cost arrangement predated the change of the status from a town to a city, which status as a city authorized, under state law, the provision of its own public school system. Subsequent to an Order to Desegregate the county public school system, the city sought to form its own school system.

This Court in viewing racial imbalance alone, as not sufficient reason to disallow the city's plan, pointed out that there were other circumstances to consider, to wit: that the city plan would nucleate segregation, as to races, between the county public school system and that of the city. As

such it was a plan to resegregate, or to enhance segregation, not a plan to desegregate.

Also, in this case before the Court, there are other circumstances. The District Court found that the Alternative Plan would increase the number of schools in default as to the "no majority of any minority" requirement immediately from five (5) to a substantial number of schools as a direct result of implementation of that plan. It was not foreseeable what additional effect would be produced in future years. Therefore, the District Court found the Alternative Plan as a plan to resegregate, or to enhance segregation.

As in *Wright, supra*, the plan was rejected. It is the position of the Amici, that the facts and rulings of *Wright, supra*, support the rejection of the Alternative Plan.

To support the contentions as to the "freedom of choice" in the Alternative Plan, the petitioners argue that *Green, supra*, does not outlaw "freedom of choice" elements. That argument is an accurate interpretation of *Green, supra*, in that this Court did not rule that "freedom of choice" can have no place in desegregation plans or was unconstitutional. However, when viewed in its broadest meaning, this Court did hold that when speedier and more effective means of conversion to a unitary, non-racial system are available, *"freedom of choice must be held unacceptable."* In this case before the Court, the Pasadena Plan has been adjudged and approved by the District Court as speedier and more effective than the prior "freedom of choice" plan which was operated by Pasadena for a decade before 1970.

During the period when the prior "freedom of choice" plan was in operation, no meaningful changes occurred in the segregation pattern of the Pasadena school system. The only changes of any merit, were a slight increase in the number of Black students in previously all-white or predominately white schools. Because of this prior experience with a "freedom of choice" plan, the District Court made

findings of de jure segregation and ordered the dismantling of the dual school system in Pasadena.

It is the position of Amici that the arguments and contentions of Petitioners, as to the reasons for the District Court to reject the Alternative Plan, are erroneous.

The total effect of the Alternative Plan would be to subdivide the District into four zones, which represent the racial composition of the district, and to allow the "freedom of choice" only within those zones. The District would be returning to the segregation patterns prior to 1970 in that four mini-districts would be created, in mirror image of the District. If "freedom of choice" could not desegregate the schools within the District prior to 1970, the "freedom of choice" in the mini-district could not effectuate desegregation.

V. There is a question as to the good faith of the present Pasadena City Board of Education.

There is ample evidence and findings in the proceedings of the lower courts to lead this Court to seriously question the good faith of the Board. As outlined above, the District Court through numerous findings has ruled that the Board has not met its burden in any way sufficient. That burden as enunciated in *Green, supra,* is an affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination is eliminated root and branch. Instead, of that affirmative duty, one of the issues before this Court, the "freedom of choice" Alternative Plan represents a neutral position of the Board in that the burden and duty would be transferred to the parents and students, at a time when the decision of *Brown I* and *Brown II,* and subsequent decisions to date, place that *burden squarely* on the Board.

Additionally, the record, in the lower court proceedings, indicate numerous instances of questionable or negative actions by the Board. In Plaintiffs-Appellees' Brief to the

United States Court of Appeals for the Ninth Circuit, pages 6-10,[7] are cited many of these instances of questionable or

[7]Following the judgment requiring Pasadena schools to desegregate, the majority of the then Board voted not to appeal it. (Exh. I.) In retaliation, the present president of the Board sought to recall those members of the Board who had voted not to appeal, and to be elected to the Board himself. (Exhs. II-VI.) Mr. Marcheschi and his two running mates made clear they were running on a platform of resistance to the district court's order which had enjoined the Board and its members "from discriminating on the basis of race in the operation of the Pasadena Unified School District." (CT 1.) It is this which the Board and its members resisted in their arduous defense of the case. And it was the reversal of this constitutional imperative that the recallers sought to achieve. In their efforts, the recallers, the present president included, made clear their view that mandatory pupil assignments to achieve the Constitution's goal were not to be countenanced. Thus Mr. Marcheschi told the voters, "Involuntary integration is self-defeating. It will not work!" (Exh. VI, p. 2) and he promised that "neighborhood schools will be restored in the Pasadena School District hopefully by January, 1971, certainly by September, 1971." (Exh. V, p. 2), and that "children will go to school where they live—in their neighborhood schools" (*ibid.*); that "minority children will be encouraged and assisted to attend schools outside their neighborhood IF THEY VOLUNTARILY DECIDE TO DO SO" (*ibid.*). Thus evidencing a clear intent that there be *no* desegregation in Pasadena. Missing from the appeal to the voters was the suggestion that white students would be encouraged to attend schools outside their neighborhood. And the slogan "Stop Forced Busing" was a hallmark of the campaign. (Exh. III, pp. 1, 2.) It will be remembered that the trial court had found the Board to have used the neighborhood school policy and policy against forced busing, plus an open enrollment or free-choice plan, and that those policies result in segregation and in increasing segregation.

While Mr. Marcheschi failed in his efforts in 1971 to recall the members of the Board and to be elected himself, he was elected to the Board at the next regular election, and from that post he continued his efforts. He presented, on November 9, 1971, "The New Pasadena Plan" (Exh. VII), the principal feature of which was a system of "free choice" for the parents of Black children as to whether the children wanted to "attend integrated schools in the White community or majority Black schools located in the Black community." (Exh. VIII, p. 4.) To make attendance in the Black community more attractive, the caveat was appended that those schools would be "under Black control." The Board as then constituted, seeking to comply with the court's order, refused. (Exh. IX.)

The next election, March 6, 1973, saw a slate of candidates running on the same platform as Mr. Marcheschi's in 1970. These persons, Richard Vetterli, Henry Myers, Jr. and Lyman Newton, ran

on a platform which included "stop forced busing of students and return them to neighborhood schools." (Exh. XIII, p. 1; see also Exhs. XII, XIV, XVI.) And Mr. Marcheschi supported them. In a Vote-O-Gram to the voters, he said: "Must elect Vetterli, Myers and Newton to join me on school board. Essential we re-establish neighborhood schools . . . ." (Exh. XVII.) The Campaign literature on behalf of Mr. Newton stated: " 'He and his wife have three children . . . Only Lori attends a public school in the Pasadena School District. The other two children attended public schools until the busing issue forced them out of their neighborhood,' said Newton." (Exh. XIII, p. 2.) *Cf. Cook* v. *Hudson*, 365 F.Supp. 855 (W.D. Miss. 1973).

That slate won, leaving the present board composed of four persons opposed to positive integration, in favor of "free choice," and one, Sam Sheets, supporting the Court's order. (CT 420.)

Virtually immediately upon taking office, the three new members reorganized the administrative set-up of the District. It will be remembered that among the discriminations practiced by the former members of the Board was discrimination in hiring and promoting administrative personnel. To remedy that situation, the Court's order required the plan to "include programs for the assignment, hiring, and promotion of . . . professional staff members in such a manner as to reduce racial segregation throughout the District." (CT 1.) This was, of course, an appropriate order. The Supreme Court has recognized that to achieve "a public school system wholly free from racial discrimination," desegregation of the staff is an important ingredient. (*United States* v. *Montgomery Co. Bd. of Educ.* [1969], 395 U.S. 225, 231-32, 23 L.Ed.2d 263, 89 S.Ct. 1670.)

To this end the Pasadena Plan approved by the Court on March 9, 1970, included specific provision for the hiring and promotion of administrative personnel. Under the heading "Recruitment and Selection of Administrators," pp. 46-47 of the Plan (Exh. A), the Plan provides for a positive effort to be made to attract and recruit minority administrators to the District. Extensive advertising of available positions was to be engaged in, including sending announcements to the college and university placement offices in Southern California, and also, to a mailing list recommended by the Department of Intergroup Education, which includes agencies and districts where minority personnel may be available. The plan required that all applicants who meet the minimum eligibility requirements were to be admitted to the examination and that all appointments had to be approved by the Superintendent. The plan took pains to make clear its intent that mere passive conduct in the search for minority personnel was not to be tolerated. Thus:

> A positive recruitment program paralleling the teacher recruitment program will actively seek out minority group administrators, supervisors, and counselors who are interested in employment with the Pasadena Unified School District. As a part of this recruitment program, bulletins concerning job opportunities will be sent to college and university placement offices and

> other professional organization offices. In these bulletins, minority candidates will be especially encouraged to apply. (*Ibid.*)

None of the procedures was followed in the July 10, 1973 appointments by the Board, on a 3-2 vote, of three new administrators. Two Acting Assistant Superintendents and an Acting Director of Elementary Curriculum were appointed without notice and without approval of the Superintendent; and all, predictably, were Caucasian. (Exh. XX, p. 3; RT 392.)

In addition, the Board thereafter, on July 31, 1973, with only Mr. Sheets objecting, appointed two Caucasian principals—also without following the recruitment procedures outlined by the Pasadena Plan. (Exh. XXI; RT 394.)

In sum, to the extent they thought they were able, the present Board members continued in the ways which brought about this case in the first place.

Another significant occurrence is that which occurred when Temple City, an all-white community and part of the Pasadena District, sought to withdraw from the District when faced with the prospect that the children would be required to go to school with Black children. Although Mr. Marcheschi speaks of "white flight" and how he wants to stop it and thus stabilize the community (*e.g.*, Exh. VIII, p. 2), he nevertheless voted to permit this entire block of white children to leave the district. (RT 153; Exh. 4, p. 17883.) This was white flight with a vengeance. Mr. Marcheschi's explanation is that it was a vote for the principle of "free choice." (RT 153.) This hardly was an exhibition of good faith. It is no wonder the trial court felt it could not relinquish jurisdiction. It could hardly have done otherwise.

By their conduct, Petitioners scarcely command the confidence which is for reasonable assurance that the old ways will not be returned to. For it is to be remembered that "the [14th] Amendment nullifies sophisticated as well as simple modes of discrimination." (*Lane* v. *Wilson* [1939], 307 U.S. 268, 275, 83 L.Ed. 1281, 59 S.Ct. 872.) And where "there has been discrimination, whether accomplished ingeniously or ingenuously, [it] cannot stand." (*Smith* v. *Texas* [1940], 311 U.S. 128, 132, 85 L.Ed. 84, 51 S.Ct. 164.) It was not what defendants call "minor racial imbalances" (Brief 23) which compelled the district court to deny relief. It was the fact that defendants have not made the school district unitary, have not sought, really, to effect desegregation, but, rather, tried every which way to avoid it, that so compelled the trial court.

Cf. The attitude of the present Board—to encourage students to attend various schools because they are "better" (Exh. L, p. 1)—with that of the Board in 1970 when it determined to comply with the district court's order: "We have proven that a major desegregation plan can be implemented smoothly in an urban area. Never again will any parent in the Pasadena Unified School District be able to legitimately say 'I want my youngster to attend this school rather than that one because his chances of receiving a good education are better!' " (Exh. 18.)

negative conduct and actions; particularly by Mr. Marcheschi, the president of the Board until July 1975.

It is difficult to reconcile the erroneous contentions and arguments of petitioners with affirmative duty and good faith. Throughout these proceedings, the petitioners have consistently found positions which are not in conformance with the Decrees and Orders of the District Court. That is not to say that legal redress excludes disagreement with the District Court. However, the same zealous energies applied to affirmative action to make the Pasadena Plan a working reality, would have made all of the lower court proceedings unnecessary.

VI. Amici Curiae are residents within the Pasadena Unified School District and/or interested parties, all of whom are dedicated to the preservation of the Pasadena Plan and the reality of a totally integrated school system.

Amici curiae are all associations of individuals, who have been intimately involved in the matter of the Pasadena School System since the institution of this action in March of 1968, nearly eight years ago. Since that time, amici have followed the various litigation, political activity and community interaction relative to the desegregation of the Pasadena schools.

It has not been an easy or comfortable eight years for ourselves, friends and loved ones, who as parents, students or community folk, have lived with the emotional trauma that has been caused by the implementation of the Pasadena Plan. It should be sufficient to say that mostly all of that emotional trauma has been instigated by those elements in Pasadena, who were determined that the Pasadena Plan and the attendant assignment of students would not work or continue. Those elements, through the press, public meetings, political activity and other means has attempted to maintain a level of hysteria in the minds of those who would be most effected by the Pasadena Plan.

However, those persons most directly effected by the Pasadena Plan, the students, have demonstrated that the plan is not only working to broaden their educational and cultural experiences, but those students have consistently supported the continuation of the Pasadena Plan in their community. It appears to be the adult community within Pasadena which continues in an attempt to maintain ardent opposition to the Pasadena Plan. The plan is working for the student population. As Judge Real of the District Court evidenced through a finding of fact, there are few disciplinary problems resulting from the implementation of the plan. Also, there were few administrative problems which were directly attributable to the Pasadena Plan. Most of the problems were attributable to opposition to the plan.

Individual students, who are connected with students' organizations at schools in the District, have expressed an interest in joining the Amici Curiae in this brief. Only last minute legal and administrative questions (legal standing, process for adoption of binding resolutions, etc.) prevent that joining as the deadline for publication of this brief approached. Some of those individuals represented students at the senior high schools in Pasadena, and ones who have probably been most acutely aware of the conflicts within the community within the last six years.

Additionally, during the proceedings in District Court, the subject matter of which is before this Court on Appeal—the motion—more than 2,000 students presented petitions to the Court which expressed their strong desires to continue to live and study under the Pasadena Plan.

The students have indicated through their behavior and performance, during the past six years, that the Pasadena Plan is a workable plan—culturally, educationally and as an desirable and important intergroup/intercultural catalyst. The students, and equal and quality education, have been the concern of this Court, after all, since *Brown I* and *Brown II* more than twenty years ago. Those beneficiaries

have spoken, and their choice has been the maintenance of the Pasadena Plan as the tool for desegregation of the school system.

All of AMICI are dedicated to the furtherance of civil rights, human dignity and the professional excellence of our society, as well as the Pasadena schools. We have all struggled together, and hard, to make the Pasadena Plan a reality. We foresee that it will be in the opinion of this Court that those labors were for a valid cause.

CONCLUSION

The judgment of the lower courts should be affirmed, and the writ of certiorari to the Ninth Circuit should be dismissed, as improvidently granted. In the alternative, the judgment of the lower courts should be affirmed through a determination of the issues on their merit and the findings of this Court.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-164

PASADENA CITY BOARD OF EDUCATION ET AL.,
Petitioners,

v.

NANCY ANNE SPANGLER ET AL.

and

UNITED STATES OF AMERICA,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF OF AMICI CURIAE THE NATIONAL EDUCATION ASSOCIATION, THE CALIFORNIA TEACHERS ASSOCIATION, AND THE PASADENA EDUCATION ASSOCIATION

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BRIEF OF AMICI CURIAE THE NATIONAL EDUCATION ASSOCIATION, THE CALIFORNIA TEACHERS ASSOCIATION, AND THE PASADENA EDUCATION ASSOCIATION

INTEREST OF AMICI CURIAE

Pursuant to Rule 42(2) of the Rules of this Court, this Brief is submitted, with the consent of the parties, by the National Education Association (NEA), the Cali-

fornia Teachers Association (CTA), and the Pasadena Education Association (PEA) as amici curiae. The parties' letters of consent have been filed with the Clerk of this Court.

The National Education Association is an independent, voluntary organization of educators open to any person who is actively engaged in the profession of teaching or who is interested in advancing the cause of education. It was first organized in 1857 and was chartered in 1906 by a special act of Congress. Its statutory purpose is "to elevate the character and advance the interests of the profession of teaching, and to promote the cause of education in the United States." 34 Stat. 805. NEA presently has 1.7 million members.

A major interest and objective of NEA is to secure equality of education and sound education for children of all races. It is convinced that segregated education is not only inherently unequal, but adversely affects the quality of education afforded to all students, not least by denying them adequate preparation for living and working in a society in which they must deal with persons not of their own race. Accordingly, NEA is committed to the goal of full, effective, and permanent desegregation of all school systems in the country and to the attainment and permanent maintenance by each school district of a genuine unitary system with no trace of racial discrimination.

Reflecting these concerns, NEA has adopted a resolution providing in part:

> "The National Education Association believes it is imperative that full integration of the Nation's schools be effected.
>
> "The Association recognizes that acceptable integration plans will include affirmative action programs and a variety of devices such as geographic realignment, pairing of schools, grade pairing and satellite schools. Some arrangements may require busing of students in order to comply with established guidelines adhering to the letter and spirit of the law." (*NEA Handbook, 1974-75, for Local, State, and National Associations*, p. 259.)

In addition, NEA and its state affiliates have participated as amici curiae in numerous major proceedings in this Court involving issues of school desegregation.[1]

The California Teachers Association is a statewide professional organization of educators and is affiliated with NEA. The Pasadena Education Association is a local organization of educators in the Pasadena Unified School District and is affiliated with CTA and NEA. As affiliates of NEA, both of these associations are committed to the same goals and objectives as is NEA.

The present case raises questions concerning when a school district in which *de jure* racial segregation has been found and which is subject to an injunction and a court-ordered plan for eliminating that segregation must be granted relief from the injunction and plan and from the court's continuing jurisdiction. In light of their commitment to the goal of full and permanent desegregation, NEA, CTA, and PEA are vitally interested in the determination of those questions. In addition, these amici curiae believe that they can be of service by presenting to this Court principles and guidelines for resolving the issues here involved.

STATEMENT OF THE CASE

In January 1970 the United States District Court for the Central District of California issued a decision find-

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[1] See, *e.g.*, *Milliken* v. *Bradley*, 418 U.S. 717 (1974); *Keyes* v. *School Dist. No. 1, Denver*, 413 U.S. 189 (1973); *School Board of the City of Richmond, Virginia* v. *State Board*, 412 U.S. 92 (1973); *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); and *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969).

ing that the school system of the Pasadena Unified School District was *de jure* segregated by race in violation of the Fourteenth Amendment. *Spangler* v. *Pasadena City Board of Education*, 311 F. Supp. 501 (App. 3-4, 97-133).[2] The court made detailed findings of fact showing that the petitioner Board of Education, by its actions and inactions on numerous occasions for over 20 years, had contributed significantly to the racial segregation of the District's schools. *Id.* at 505-521 (App. 97-126). Specifically, those findings revealed that the Board had, among other things, drawn and changed attendance areas in a way which increased the segregation and racial identifiability of the schools; used transportation to allow white students to avoid attending largely black schools (including the transportation of white students past available majority-black schools to majority-white schools); discriminated on a racial basis in the hiring, assignment, and promotion of black teachers and administrators; adopted policies on the construction and rehabilitation of schools which contributed to the schools' racial identifiability; and granted racially motivated transfer requests, thereby increasing the segregation. As a remedy for this *de jure* segregation, the court enjoined the Board from discriminating on the basis of race, ordered the Board to prepare a plan to correct the racial segregation in the school district, and ordered that such plan must, among other things, "provide for student assignments in such a manner that, by or before the beginning of the school year that commences in September of 1970 there shall be no school in the District . . . with a majority of any minority students." *Id.* at 505 (App. 3-4).

In response to the court's directive, the School Board submitted its proposed plan. With respect to elementary schools, the plan divided the school district into four relatively ethnically balanced areas and established stu-

[2] Citations to "App." refer to the Joint Appendix in this case.

dent attendance zones within each area in such a way that by the first day of the 1970-71 school year there would be no "majority of any minority" in any school (App. 9-26, 60-92). According to the plan, "[e]ach year the areas will be reviewed to assure that the ethnic balance is maintained" (App. 10). Similarly, with respect to junior and senior high schools, the plan divided the district into attendance areas which were relatively ethnically balanced and would meet the court's "no majority of any minority" mandate (App. 27-34). It provided that "Junior High School boundaries may need to be changed from time to time to continue ethnic balance as established in September 1970" (App. 27). The plan also contained provisions for eliminating discrimination in the assignment, hiring, and promotion of teachers and administrators (App. 47-57). In March 1970 the district court approved the Board's plan, popularly known as the "Pasadena Plan" (App. 96).

The Board did not appeal the district court's decision and order or the court's approval of the Pasadena Plan. The plan went into effect at the beginning of the 1970-71 school year.

In January 1974 the Board moved the district court for relief from the court's order requiring desegregation and from the court's order approving the Pasadena Plan; for dissolution of the injunction that there be no majority of any minority students in any school; for termination of the court's continuing jurisdiction; and, in the alternative, for modification of the Pasadena Plan by substitution of another plan. The district court denied all these motions. 375 F. Supp. 1304 (1974) (App. 452-59). In so doing, the court found that for three of the four years since the Pasadena Plan was implemented, the school district had failed to comply with the court's injunction and the plan by having a school or schools with a black student enrollment of

over 50 percent. There was one such school in the 1971-72 school year, four in the 1972-73 year, and five in the 1973-74 year. *Id.* at 1306 (App. 454). The court stated further that the Pasadena Plan had not had the cooperation of the Board (*id.* at 1308, App. 458); that the majority of the Board were avowed opponents of the plan and its aims (and were particularly opposed to any court-ordered transportation of students) (*id.* at 1308 n.14, 1309, App. 457 n.14, 459); that the Board advocated a modified "freedom-of-choice" plan which would predictably lead to at least some resegregation (*id.* at 1307, App. 455-56); and that to grant the relief requested in these circumstances would "surely be to sign the death warrant of the Pasadena Plan and its objectives" (*id.* at 1309, App. 459). The court also rejected the Board's arguments that the Pasadena Plan should be terminated because it was the sole cause of "white flight" and because it was not succeeding educationally. *Id.* at 1306, 1308 (App. 454, 458). Finally, the court refused to allow the substitution of the Board's proposed alternative plan, because it was essentially a "freedom-of-choice" plan like those which had failed to accomplish desegregation in the past, because it would predictably cause some resegregation, and because many of its purported advantages could also be obtained under the Pasadena Plan. *Id.* at 1307-08 (App. 455-58). In announcing its decision orally, the district court stated:

> "Unfortunately, I cannot make that finding [that the school district has become unitary], because I think that from the evidence that was presented to me I find still some vestiges that would indicate that the Board has not completely made this School District a unitary school district." Quoted in the dissenting opinion below, 519 F.2d at 444 n.7 (Pet. A32 n.7) [3]

[3] Citations to "Pet." refer to the Petition for a Writ of Certiorari.

On appeal the Court of Appeals for the Ninth Circuit affirmed the district court's decision, holding, *inter alia*, that the district court did not abuse its discretion and acted reasonably in concluding that "full and effective elimination of racial discrimination" and "the contemplated disestablishment of segregation"—including the elimination of "all vestiges of *de jure* segregation"—had not been achieved in the Pasadena School District. 519 F.2d 430, 437, 438 (1975) (Pet. A10, A12). The Board now asks this Court to review and reverse that ruling.

SUMMARY OF ARGUMENT

I

Since the dissolution or modification of injunctive relief and other equitable remedies is within the broad equitable discretion of the trial court, the question in the present case is whether the district court here abused its discretion in denying the relief sought by the School Board. The decisions of this Court make clear that a district court in a school desegregation case is not required to dissolve a desegregation remedy or terminate its jurisdiction at least until the school board has shown that the state-imposed segregation has been effectively eliminated "root and branch" and a genuine unitary system has been implanted in its place. The board cannot meet that burden unless it can demonstrate that the disestablishment of segregation is complete and final and promises realistically to last.

While this Court has not had prior occasion to delineate specifically the factors and criteria that should guide the district court's determination in this regard, the Court's decisions suggest what the relevant criteria should be.

First, the district court may refuse to dissolve the desegregation remedy if sufficient time has not passed

to enable the court to evaluate the remedy in operation and to make an informed determination as to whether the officially imposed segregation and all its vestiges have been fully and finally eliminated. Thus, a school district cannot attain unitary status in an instant; a reasonable implementation period, whose length will vary with the circumstances of the particular case, is necessary.

Second, the district court may deny relief if the school board has not shown that it has fully complied with the desegregation injunction and plan in effect. That showing must include a demonstration of compliance not only with the student assignment provisions of the plan, but also with any provisions regarding faculty, staff, transportation, extracurricular activities, and facilities. In this connection, the board cannot justify a failure to comply on the ground that the remedy was invalid, when the board did not appeal that remedy or move the district court for modification.

Third, even if the board has shown compliance with the desegregation remedy, it should also be required to show that that remedy has in fact proved to be effective to achieve its goal of completely disestablishing the state-imposed segregation and all its vestiges.

Finally, since the officially imposed segregation cannot have been fully and effectively disestablished until it is reasonably certain that desegregation will survive without the court's supervision, the court may refuse to dissolve a desegregation remedy if the board has failed to establish a sufficient basis for the court to be confident that the board will continue to maintain a fully desegregated system after dissolution. This determination as to confidence will depend on the circumstances of the case. Relevant factors should include whether the board has cooperated in implementing the desegregation remedy, whether the board is committed or

opposed to affirmative measures (including any necessary student transportation) to achieve and maintain desegregation, and whether the board is planning, upon dissolution of the remedy, to take any action that would lead to an increase in racial separation in or racial identifiability of its schools. As to the last factor, if the court finds that the board is contemplating such action, the board should be required to demonstrate to the court's satisfaction both that the proposed action is not motivated by any segregative purpose and that the effect of that action would not be to impair the complete disestablishment of officially imposed segregation by recreating, or permitting the reemergence of, the effects of that segregation.

II

In the present case, the record supports the conclusion that the School Board did not meet its burden in the above respects, and hence the district court did not abuse its discretion in denying the relief sought.

Contrary to the Board's contention, the Pasadena School District did not instantaneously achieve a genuine unitary status upon institution of the Pasadena Plan in the 1970-71 school year. That initial implementation did not provide the district court with sufficient time to evaluate the plan in operation, to determine whether all vestiges of the past intentional segregation were eliminated, or to gain any reasonable basis for confidence in the continued and lasting maintenance of desegregation in the District.

Moreover, the district court was justified in finding that the Board had not shown that unitary status had been attained and maintained at the time of the Board's motions. In this regard, the district court found that the Board had not shown compliance with the Pasadena Plan, because in three of the four years since the Plan went into effect there were schools in the District with a

majority enrollment of minority students. The original "no majority of any minority" injunction, of course, was not appealed and hence is not subject to attack here. In any event, that requirement did not compel, as a matter of substantive constitutional right, any particular degree of racial balance in any school. Rather, as a remedial measure, it established a maximum limitation below which variations in racial composition were permissible, and thus served as a valid "starting point" from which the Board was to proceed in shaping the remedial plan which it was to submit.

It may be that, as the Board claims, the subsequent deviations from that "no majority of any minority" standard were due solely to demographic changes. But those deviations nonetheless could have provided a justifiable basis for the district court's decision. The Pasadena Plan appears to have contemplated that there should be an annual review of student attendance areas and a readjustment of those areas if necessary to meet the "no majority of any minority" standard. The Board failed to make such readjustments. That failure cannot be justified on the ground that the readjustment provisions were invalid, when (a) the provisions arose from the plan prepared and submitted by the Board itself; (b) provisions for annual readjustments during the implementation period prior to full disestablishment are not precluded by this Court's decisions; and (c) the Board failed to appeal or seek modification of those provisions and instead simply failed to comply. All of these factors bear on whether the Board adequately showed that it not only had attained and maintained a unitary system, but could be trusted to continue maintenance of such a system upon dissolution of the remedy.

Even if the Pasadena Plan did not require annual readjustments, the subsequent deviations from the "no majority of any minority" standard still indicated a trend

toward racial identifiability of schools; and the court could consider that trend in determining whether the desegregation remedy ordered had proved to be effective in achieving and maintaining a fully desegregated system that promised to last.

Furthermore, even apart from student assignment, the Board failed to show compliance with the plan, and the effectiveness of the plan, in other areas (*e.g.*, regarding faculty and staff). That failure in itself justifies the district court's conclusion that the Board had not shown that a genuine unitary system had been implanted.

Finally, and in any event, the district court had a reasonable basis for concluding that the Board had not provided the court with a sufficient ground for confidence that the Board would continue to maintain a fully desegregated system after dissolution of the remedy. The record reveals that, if the relief sought had been granted, the Board would have put into effect an alternative plan predictably leading to increased racial separation in and racial identifiability of schools. The district court had a reasonable basis for finding that the Board had failed to show that the effect of that plan would not be to impair the full disestablishment of officially imposed segregation by recreating the effects of such segregation. The evidence indicated that the alternative plan would foreseeably have resulted in a substantial increase in racial separation and in reemergence of numerous racially identifiable schools, reflecting those schools' racial identifiability prior to 1970. Thus the plan would have had the impact of recreating the effects of the prior officially imposed segregation, not only by reinstating the schools' racial identities, but also by restigmatizing black students as inferior. Those students, seeing the sudden racial identifiability of their schools upon institution of

the alternative plan, could not be expected to conceive of that racial identifiability as benign and unassociated with the prior *de jure* segregation. When the court considered these effects of the alternative plan along with the Board's long history of intentional segregation and the Board members' present avowed opposition to any "forced busing," it could permissibly have concluded that the Board had not satisfied it that lasting desegregation would continue to be maintained.

We therefore urge this Court to affirm. In the alternative, if this Court should conclude that the district court did not apply the proper criteria or relied on an improper consideration, we suggest that the Court remand the case to the district court for application of the criteria contained in Part I of our Argument.

ARGUMENT

Like the granting and the scope of injunctive relief and other equitable remedies, the dissolution or modification of such remedies is within the "wide discretion" of the trial court as guided by traditional equitable principles. *System Federation* v. *Wright*, 364 U.S. 642, 648 (1961). The question in the present case, then, is whether the district court abused its equitable discretion in refusing to dissolve or modify its injunction and the court-approved Pasadena Plan and to terminate its continuing jurisdiction—or, in other words, whether the district court was *required* to grant that relief. This question of whether and upon what showing a district court must dissolve an injunction and plan designed to eliminate *de jure* school segregation and its effects, and must terminate its jurisdiction over the school district involved, is one of vital importance not only for the school board, schoolchildren, and educators of Pasadena, but also for those of every other school district

subject to such remedial orders. In this Brief, we will first set forth certain principles and guidelines which we believe should govern a district court's resolution of this question, and we will then demonstrate how those principles and guidelines apply to the present case.

I. A DISTRICT COURT IS NOT REQUIRED TO DISSOLVE ITS REMEDY FOR ELIMINATING *DE JURE* SEGREGATION WHERE THE SCHOOL BOARD HAS NOT SHOWN THAT FULL AND EFFECTIVE DESEGREGATION HAS BEEN ATTAINED AND MAINTAINED AND IS REASONABLY CERTAIN TO CONTINUE TO BE MAINTAINED AFTER DISSOLUTION.

In *Green* v. *County School Board*, 391 U.S. 430, 437-38 (1968), this Court held that school boards operating *de jure* segregated systems have "the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." To ensure that this duty is met, the Court concluded that "whatever plan [of desegregation] is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed." *Id.* at 439. Similarly, in *Raney* v. *Board of Education*, 391 U.S. 443, 449 (1968), the Court stated:

> "In light of the complexities inhering in the disestablishment of state-established segregated school systems, *Brown II* contemplated that the better course would be to retain jurisdiction until it is clear that disestablishment has been achieved. We agree . . . that the district courts 'should retain jurisdiction in school segregation cases to insure (1) that a constitutionally acceptable plan is adopted, and (2) that it is operated in a constitutionally permissible fashion so that the goal of a desegregated, nonracially operated school system is rapidly and finally achieved.' *Kelley* v. *Altheimer*, 378 F.2d 483, 489."

These cases make clear that where a school district has been found to have been *de jure* segregated and the district court has framed a remedy to eliminate and disestablish that segregation, the court should keep that remedy in effect and retain its jurisdiction until the segregation has been effectively eliminated "root and branch" and a genuine unitary system has been implanted in its place. It follows *a fortiori* that a court cannot be required to dissolve the remedy or terminate its jurisdiction at least until the school board can show that such full and effective desegregation and the establishment of a genuine unitary, nondiscriminatory system have been attained and maintained.

Moreover, such a unitary system cannot be said to have been truly implanted until it appears with reasonable certainty that full and effective desegregation will continue to be maintained by the school board. Desegregation is not a punishment imposed on a school board for unlawful acts; it is a remedy to ensure that students' fundamental constitutional rights are secured and will continue to be protected from violation. Thus in *Green* the Court quoted from *Louisiana* v. *United States*, 380 U.S. 145, 154 (1965), that the court has "'the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past *as well as bar like discrimination in the future.*'" 391 U.S. at 438 n.4 (emphasis added). Similarly, in *Monroe* v. *Board of Commissioners*, 391 U.S. 450, 459 (1968), the Court condemned plans which would lead to "resegregation"; and in *Raney* the Court stated that district courts should retain jurisdiction until the "'goal of a desegregated, non-racially operated school system is rapidly and *finally* achieved,'" 391 U.S. at 449 (emphasis added). Accordingly, the question whether state-imposed segregation and its vestiges have been completely disestablished encompasses the question whether such disestablishment is final and promises realistically to last.[4]

In sum, where, as here, a school district that has been found to have been segregated by state action and is operating under an injunction and court-approved plan for remedying such violation seeks dissolution of that remedy, the board bears the burden of showing that the segregation and all its vestiges have been fully, effectively, and finally eliminated and replaced by a genuine unitary system that is reasonably certain to last. This Court has not had prior occasion to delineate specifically the factors and criteria that should guide the district court's determination as to whether the board has met that burden. Nevertheless, this Court's decisions suggest what the relevant criteria should be. As we now discuss, those criteria are as follows: (1) whether sufficient time has passed to enable the court to make an informed decision as to whether the segregation has been fully and finally disestablished; (2) whether the school board has fully complied with the desegregation remedy in effect; (3) whether, even if the board has so complied, that remedy has proved to be effective to disestablish the segregation and remove its vestiges; and (4) whether there is a reasonable basis for confidence that the board will continue to maintain a fully desegregated system after dissolution of the remedy.

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[4] Similar considerations apply in areas other than school desegregation. Thus, for example, in *United States* v. *Swift & Co.*, 286 U.S. 106, 116-18 (1932), the Court held that a district court should not have modified an antitrust injunction so as to weaken its restraints where the power of the companies subject thereto to restrain competition had not been finally eliminated and there was a danger that, if the injunction were so modified, those companies might well resume anticompetitive practices.

A. The Court May Refuse To Dissolve the Desegregation Remedy If Sufficient Time Has Not Passed To Permit an Informed Determination as to Whether State-Imposed Segregation and Its Vestiges Have Been Fully, Effectively, and Finally Eliminated.

Before dissolving a desegregation injunction and plan, the district court should be satisfied that enough time has elapsed to enable it to determine whether the state-imposed segregation has been fully rooted out and a genuine unitary system implanted in its place. This Court recognized this factor in *Green* when it stated that "whatever plan is adopted will require evaluation in practice" before the court should terminate its jurisdiction. 391 U.S. at 439. Likewise, in *Raney*, the Court referred to "the complexities inhering in the disestablishment of state-established segregated school systems," and it noted that district courts should retain jurisdiction to ensure that the desegregation plan "is operated in a constitutionally permissible fashion." 391 U.S. at 449. Again, in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 31 (1971), the Court recognized that some time must pass before a school system becomes "unitary."

It is thus highly unlikely, at best, that a school district, particularly one with a long history of racial segregation and discrimination, could achieve a genuine unitary, nondiscriminatory system in an instant or indeed in a single school year. That would not provide enough time to permit the court to evaluate the remedy in operation, to determine whether all vestiges of the *de jure* segregation have been eliminated, or to gain any reasonable confidence that the board, upon dissolution of the remedy, will maintain a fully desegregated system. As the Fifth Circuit stated in *Lemon* v. *Bossier Parish School Board*, 444 F.2d 1400, 1401 (1971), in holding that a school district could not be established as a unitary system in a

single year, "'[o]ne swallow does not make a spring.'"[5] Hence, before dissolution of a desegregation remedy, there must have been sufficient time for the court to evaluate the remedy in practice and to determine whether it has led to the attainment and maintenance of a genuine unitary system that promises to last.

The amount of time needed for the court to make the necessary determinations will, of course, vary from case to case depending on the nature and extent of the prior violations, the nature and scope of the remedy and the time frame established for its implementation, the willingness of the school board to cooperate in the full implementation of the remedy and its objectives, and the district court's degree of confidence that desegregation will be maintained in the future. The experience of the Fifth Circuit has indicated to that court that three years is a minimum for district courts therein to retain jurisdiction before determining whether a school district has achieved unitary status. *United States* v. *Texas*, 509 F.2d 192 (5th Cir. 1975); *Youngblood* v. *Board of Public Instruction*, 448 F.2d 770 (5th Cir. 1971); *Wright* v. *Board of Public Instruction*, 445 F.2d 1397 (5th Cir. 1971). Thus, the court with the most experience in school desegregation cases has confirmed the importance of allowing a sufficient implementation period to enable the

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[5] See also *United States* v. *Coffeeville Consolidated School District*, 513 F.2d 244, 247 (5th Cir. 1975). The experience of the courts indicates that racially discriminatory activities of school boards, particularly regarding black teachers, do not cease at the moment the desegregation order is implemented. See, *e.g.*, *McLaurin* v. *Columbia Municipal Separate School District*, 478 F.2d 348, 353 (5th Cir. 1973); *Baker* v. *Columbus Municipal Separate School District*, 462 F.2d 1112 (5th Cir. 1972). Indeed, in *Keyes* v. *School District No. 1, Denver*, 413 U.S. 189, 209-10 (1973), this Court recognized that the discharge of a disproportionately large number of black teachers incident to a desegregation order establishes a *prima facie* case of racial discrimination.

court to make an informed decision about whether a lasting unitary system has been implanted.

B. The Court May Refuse To Dissolve the Desegregation Remedy If the Board Has Not Shown That It Has Complied with the Court's Injunction and the Court-Approved Plan.

In ruling on a motion to dissolve a desegregation remedy, it is obviously relevant to determine whether the school board has complied during the above-discussed implementation period with the court's injunction and the desegregation plan approved and ordered into effect by the court. It is difficult to see how the board could show that it has attained and maintained a fully desegregated system and can be trusted to continue to do so if it cannot show that it has fully complied with the remedy to eliminate the past *de jure* segregation and its effects. Hence, the board should be required to show such compliance, and the district court is entitled to rely on its failure to do so in denying relief.

In this connection, it is of prime importance that the board show compliance with the student assignment provisions of the plan. Those provisions may require, for example, a particular initial readjustment of student attendance areas in order to achieve desegregation, and the simple maintenance of those same attendance areas thereafter. Alternatively, the plan may call for annual readjustment of attendance areas during the implementation period if necessary to ensure that the schools' racial composition meets or continues during that period to meet a particular goal.[6] In any case, the board must show

[6] Such a requirement is not precluded by *Swann*, which states only that "[n]either school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies *once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system.*" 402 U.S. at 31-32 (emphasis added). That decision does not prohibit year-by-year adjustments during the implementation period—*i.e.*, prior to the time when the court is able to determine whether full desegregation has been attained and maintained and racial discrimination by state action effectively eliminated. A provision for such readjustments may well be justified in particular cases. For example, it may not be known initially whether the student assignment plan is practicably workable to achieve the result intended, and so the plan may provide for annual readjustments during the first few years of implementation if necessary to iron out difficulties and to ensure that desegregation is achieved. Furthermore, a plan may call for annual readjustments for a few years in order to take into account the impact of any massive "white flight" which might render the initial assignment plan ineffective to achieve complete disestablishment of the state-imposed segregation. In any event, the factual contexts in which desegregation orders may be applied are so many and varied that a district court should not be precluded from including in a remedy in a proper case a provision for annual readjustment during the implementation period.

that it has complied with such provisions of the plan.[7]

Moreover, even if the relief sought by the board relates only to the student assignment provisions of the desegregation plan, the board should also be required to show that it has complied with other provisions of the plan. In both *Green* (391 U.S. at 435) and *Swann* (402 U.S. at 18), the Court pointed out that, independent of student assignment, discriminatory school board policies regarding faculty, staff, transportation, extracurricular activities, and facilities, leading to racial identifiability of schools, were important indicia of a segregated system, and that the board's duty to convert to a desegregated unitary system included a responsibility to eliminate discrimination in these respects.[8] That responsibility can-

[7] We demonstrate below that, regardless of the validity or invalidity of such provisions, the board cannot justify its failure to comply on grounds of invalidity when it did not judicially challenge the order establishing the provisions in question—either by appeal or by requesting the district court to modify those provisions. See p. 21, *infra*.

[8] The Fifth Circuit specifically requires review of desegregation plans in terms of a "sextet of indicia—student bodies, faculty,

not be divorced from the obligation to protect the students' constitutional rights and to develop a proper and effective student assignment plan. This is particularly true with respect to faculty, for, as this Court has recognized, "racial allocation of faculty denies [students] equality of educational opportunity without regard to segregation of pupils . . . [and] renders inadequate an otherwise constitutional pupil desegregation plan . . . ." *Rogers* v. *Paul*, 382 U.S. 198, 200 (1965).[9] Likewise, the Court in *Swann* noted the importance of school construction and abandonment policies in creating a system where the students are racially segregated; and it stated that school authorities and district courts have the responsibility to see that such policies in the future do not perpetuate or reestablish segregation, and that district courts should retain jurisdiction to ensure that these responsibilities are carried out. 402 U.S. at 21.

Thus, before finding, on a motion to dissolve a desegregation remedy, that the officially imposed segregation has been eliminated root and branch and a genuine and lasting unitary system implanted, the district court should be satisfied that the board has eliminated discrimination in the hiring and assignment of teachers and administrators and in school construction, as well as in other matters such as transportation and extracurricular activities. The board's failure to demonstrate that it has complied with the provisions of the plan dealing with those matters would justify the court's denial of the relief sought.

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staff, transportation, extracurricular activities, and facilities." *Carr* v. *Montgomery County Board of Education*, 429 F.2d 382, 384 (5th Cir. 1970); *Adams* v. *Rankin County Board of Education*, 485 F.2d 324, 325 (5th Cir. 1973).

[9] Again, in *United States* v. *Montgomery Board of Education*, 395 U.S. 225, 231-32 (1969), the Court stated that "faculty and staff desegregation [is] a goal that we have recognized to be an important aspect of the basic task of achieving a public school system wholly free from racial discrimination."

The board's failure to comply with any portion of a desegregation remedy cannot be justified simply on the ground that the remedy was invalid when adopted or has been shown to have been invalid by intervening judicial decisions. If the board believed that the remedy was invalid when adopted, its proper course was to appeal therefrom. If it failed to do so (or did so and lost), it cannot justify its noncompliance on the ground that the district court acted unlawfully in initially imposing the remedy. *United States* v. *United Mine Workers*, 330 U.S. 258, 293-94 (1947); *Walker* v. *City of Birmingham*, 388 U.S. 307 (1967). Similarly, if the board believes that intervening decisions have shown the remedy to be invalid, it is incumbent on the board to ask the district court for a modification of the remedy on that ground and to appeal any adverse decision. See *Walker* v. *City of Birmingham*, *supra*, at 317. If it does not do so and instead simply violates a provision of the remedial injunction or plan, that violation cannot be justified on a subsequent motion to dissolve the remedy.[10] Such noncompliance tends to undermine a claim by the board that it not only has attained and maintained a fully desegregated system, but can with confidence be trusted to continue to do so.

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[10] Were it otherwise, the mandate of *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969), would have become a dead letter. As the Fifth Circuit has recognized, the message of that decision and its progeny has been to implement desegregation plans now and to litigate afterwards. *Singleton* v. *Jackson Municipal Separate School District*, 419 F.2d 1211, 1216 (5th Cir. 1970) (en banc).

C. The Court May Refuse To Dissolve the Desegregation Remedy, Even Where the Board Has Complied Therewith, If the Board Has Not Shown That the Remedy Has in Fact Proved To Be Effective To Eliminate Officially Imposed Segregation and Its Vestiges.

Even if the Board has complied with the district court's injunction and the court-approved plan, it cannot be said that a genuine unitary system has been implanted if the remedy has not proved to be an effective one for completely disestablishing the officially imposed segregation and all its vestiges. Hence, on a motion to dissolve a desegregation remedy, the school board should be required to show that in fact the remedy has proved to be effective to accomplish its objective.[11]

It may be, for example, that after the desegregation plan has gone into effect—particularly one providing only for a single readjustment of attendance areas—significant racial separation in schools or racial identifiability of schools would remain or would shortly reemerge. In that situation, as this Court held in *Keyes* v. *School District No. 1, Denver*, 413 U.S. 189, 210 (1973): "be it a statutory dual system or an allegedly unitary system where a meaningful portion of the system is found to be intentionally segregated, the existence of subsequent or other segregated schooling within the same system justifies a rule imposing on the school authorities the burden of proving that this segregated schooling is not also the result of intentionally segregative acts." The board should bear the same burden here. Moreover, the racial separation or identifiability that remains or reemerges may indicate that the remedial orders and plan were ineffective tools to eliminate fully the past *de jure* segregation and all its effects. Such ineffectiveness might have

[11] That showing should include a demonstration of effectiveness on each of the "sextet of indicia" referred to above .See pp. 19-20 and n.8, *supra*.

been caused, for instance, by a mistake in the reassignment of students or faculty or a misapprehension as to the racial effect thereof,[12] or by the unintentional omission of provisions to deal with a particular aspect of the desegregation (*e.g.*, regarding faculty or facilities), or merely by the fact that the plan has proved to be unworkable in practice.[13]

Where the desegregation remedy has thus proved ineffective to achieve the goal of full and lasting desegregation, the district court may well be required, on a proper motion, to modify that remedy in such a way as to ensure that the goal is accomplished.[14] But on a motion of the school board to dissolve the court's injunction and the desegregation plan completely and to terminate the court's jurisdiction, the failure of the board to demonstrate the effectiveness of the remedy to achieve the goal justifies the court's denial of *that* relief.

[12] *Cf. Hereford* v. *Huntsville Board of Education*, 504 F.2d 857, 858-59 (5th Cir. 1974), where the court held that a previously approved desegregation plan had proved ineffective to desegregate a particular school because the number of white students that had been projected by the plan to attend that school had failed to do so.

[13] Pursuant to this Court's decisions in *Alexander* v. *Holmes County Board of Education*, *supra*, and *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290 (1970), *de jure* segregated school districts were required to convert to a unitary system immediately; and the district courts, particularly in the South, were simply unable adequately to review all the plans for effectiveness or to supervise the conversion process in all districts.

[14] See *United States* v. *United Shoe Machinery Corp.*, 391 U.S. 244 (1968), where the Court held that where an antitrust decree could be shown to have been ineffective to accomplish the intended result, the district court had the duty, on the motion of the Government, to modify the decree so as to ensure the achievement of that result.

D. The Court May Refuse To Dissolve the Desegregation Remedy If the Board Has Not Shown That the Court Can Be Confident That a Fully Desegregated System Will Continue To Be Maintained Upon Dissolution.

As we have stated before, desegregation is not a prison term for the offending school board, to be served and then terminated. Rather, it is a remedy to ensure that the constitutional violations and all effects thereof are eliminated "root and branch" and do not reoccur. It is meant not only to undo the effects of past *de jure* segregation, but to bar like segregation and effects in the future. *Louisiana* v. *United States*, *supra*, 380 U.S. at 154; *Monroe* v. *Board of Commissioners*, *supra*, 391 U.S. at 459. Accordingly, state-imposed segregation cannot have been fully and effectively disestablished or a genuine unitary system truly implanted until it is reasonably certain that desegregation will be lasting. See pp. 14-15, *supra*. On a motion to dissolve a desegregation remedy, therefore, the school board bears the burden of satisfying the court that the court can be confident that, in the absence of the detailed regulatory remedy and the court's continuing jurisdiction, the board will not undo the desegregation but will continue maintenance of it. If the court, on a reasonable basis, finds that the board has not met that burden, it may deny relief.

The determination as to whether the board has provided the court with a sufficient basis for such confidence depends largely on the particular circumstances of the case, and the relevant factors will vary from case to case. Nevertheless, certain factors pertinent to the inquiry can be identified. For example, if the board has cooperated in implementing the court-ordered plan and has demonstrated a commitment to affirmative action to remedy segregation and a willingness to continue actively on its own to cope with recurrent racial

problems, those factors would tend to support a finding of confidence that the board will continue to maintain a desegregated system.[15] A contrary inference would arise from evidence that the board has been intransigent in implementing the remedy ordered or is opposed to affirmative measures, including any necessary student transportation, that may be required to achieve or maintain desegregation. While the board members may have a constitutional right to speak out in opposition to such measures, the court need not blind itself to those views in determining whether the board can be trusted not to engage in impermissible resegregation if left free to do so.

Another factor, which needs more extended discussion because of its particular relevance to the present case, is whether the board is planning, upon dissolution of the desegregation remedy, to take any action which would result in an increase in racial separation in its schools. If the court finds that such action is contemplated, then the board should be required to demonstrate to the court's satisfaction both that the proposed action is not motivated by any segregative or discriminatory purpose and that the effect of such action would not be to interfere with the complete disestablishment of officially imposed segregation by recreating, or permitting the reemergence of, the effects of that segregation.

This standard finds support in the decisions of this Court. As discussed above, this Court in *Keyes* recognized that a long history of intentional segregation by the board justifies imposing on the board the burden of proving that any subsequent segregation is not also the result of intentionally segregative acts. So too here

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[15] The district court in *Swann* v. *Charlotte-Mecklenburg Board of Education* relied on such factors in its final order closing the file in that case. That order, dated July 11, 1975, is attached hereto as Appendix A.

the board should be required to show first that its proposed action is not motivated by any segregative purpose; and in this regard its history of intentional segregation, its attitude toward the desegregation order, and the amount of increased racial separation that would result from the proposal are all relevant.[16]

Whatever the board shows regarding its purpose, however, the district court is justified in denying relief if the board has failed to show that the *effect* of its proposal would not be to impair full disestablishment of *de jure* segregation by recreating the effects or conditions of that segregation. In *Wright* v. *Council of the City of Emporia*, 407 U.S. 451, 462 (1972), this Court held that where a school board, subsequent to a desegregation order, proposed to take new action that would have increased racial separation, it was necessary to focus, regardless of the purpose or motivation of the action, "on the *effect* of the action upon the dismantling of the dual school systems involved" (emphasis by Court). According to the Court, such a proposal "must be judged according to whether it hinders or furthers the process of school desegregation. If the proposal would impede the dismantling of the dual system, then a district court, in the exercise of its remedial discretion, may enjoin it from being carried out." *Id.* at 460. The Court followed this holding in *United States*

[16] Thus, for example, where the board has a long history of intentional discrimination and is presently opposed to the desegregation order in effect, and where the result of its new proposal would be to give rise to a very substantial increase in racial separation and racial identifiability of schools, the court may properly be suspicious of the board's purpose. In that situation, the court may have little reason to believe that the purpose or intent to segregate has changed simply because the board has been under a desegregation order. Hence, the court may be justified in finding that the board has failed to meet its burden of showing that the increased racial separation that would result from the proposal is not motivated by any segregative intent.

v. *Scotland Neck Board of Education*, 407 U.S. 484, 489 (1972).

Both *Wright* and *Scotland Neck* involved proposals to establish a new city school district separate from that of the county of which it had always been a part; and in both cases the Court concluded that the district courts had properly found that the proposals involved would impede the disestablishment of the *de jure* segregation. In so holding, the Court in both cases relied on the fact that the new proposals would recreate the effects of that *de jure* segregation. In *Wright*, the Court first considered the fact that, whereas the racial composition of the prior single district was 34 percent white and 66 percent black, the new city district would be 48 percent white and the new county district 72 percent black. 407 U.S. at 464. The Court then stated that, while this disparity in racial composition was not enough, standing alone, to warrant enjoining implementation of the proposal in that case, the significance of that disparity was enhanced by several factors which, when considered together with the disparity, did justify the injunction: (1) the anticipated potential for an even greater disparity if county whites fled their system while city whites returned to theirs (*id.* at 464-65); (2) the fact that the city schools were formerly all white and the county schools all black, thus indicating that the proposal would perpetuate the vestiges of the prior *de jure* segregation (*id.* at 465); and (3) the fact that since the proposal was made in reaction to the district court's desegregation order and would result in " 'nearly one-half the total number of white students in the county abandon[ing] the county schools for a substantially whiter system,' " it could restigmatize the black schoolchildren as inferior, just as did the prior *de jure* segregation, and thus cause them the same psychological harm (*id.* at 465-66). In *Scotland Neck*, the Court relied on the fact that the disparity in racial composition be-

tween the two proposed new districts would be "substantial"—with the city schools 57 percent white and the county schools in a particular adjacent section 98 percent black—and that, since the city schools were formerly all white and the county schools all black, "[t]he traditional racial identities of the schools in the area would be maintained" (407 U.S. at 490).

Similar considerations should apply where a district court finds that a school board seeking dissolution of a desegregation remedy is planning, upon dissolution, to take action that would result in some increase in racial separation. In that situation, the court should determine not only whether the board has shown that the proposal lacks any segregative purpose, but also whether the board has shown that the effect of the proposal would not be to impede or undo the disestablishment of officially imposed segregation by recreating the effects of that segregation.[17] In making the latter determination, the court should take into account factors such as were involved in *Wright* and *Scotland Neck*. Thus, for example, where the board's proposal would result in a substantial increase in racial separation and racially identifiable schools and reemergence of the traditional racial identities of those schools, its impact would plainly be to recreate the effects of the past *de jure* segregation. Moreover, where the proposal would increase racial separation at the very time that the board is freed of the desegregation order, it could have the effect of restigmatizing black schoolchildren as inferior, just as they were so stigmatized prior to that order. The black child would see only that his school, once identifiably black because of the board's intentional segregative action, is identifiably black again on account of the board's action immediately upon dissolution of the desegregation order. He would have to be a great Sophist to conceive of the present racial identifiability as benign and unassociated with the prior *de jure* segregation. In short, where the board cannot succeed in disentangling the racial effects of its new proposal from the effects of the previous intentional segregation, the district court may find that the board has failed to show that the effect of the proposal would not be to impair disestablishment and hence has failed to provide the court with a sufficient basis for confidence in the continued and lasting maintenance of a genuine unitary system.

If, after making all the above-described determinations and weighing all the appropriate factors, the district court determines that the school board has not shown that full and effective desegregation has been attained and maintained and is reasonably certain to continue, then the court is justified in refusing to dissolve its injunction and its approved plan and to terminate its continuing jurisdiction. That refusal can hardly be called an abuse of discretion.[18]

[17] We believe that Judge Wallace, dissenting in the court below, intended to set forth the same test when he stated that the board must show "first, that the plan to replace the injunction lacks any segregative intent; and second, that any segregation reasonably foreseeable upon implementation of the plan is not attributable to any past, intentionally segregative actions on its part." 519 F.2d at 446 n. 10 (Pet. A33). If the board fails to show that the effect of its proposal would not be to recreate the effects of the *de jure* segregation, then it has failed to show that the racial separation foreseeable under that proposal is, in Judge Wallace's language, "not attributable to any past, intentionally segregative actions on its part." (Contrary to Judge Wallace's opinion, however, there was, as we show on pp. 42-44, *infra*, sufficient evidence in this case upon which the district court could find that the board had not met its burden in this regard, and hence affirmance, rather than remand, was proper.) If, on the other hand, Judge Wallace meant that the board could meet its burden simply by showing that the racial separation foreseeable under the plan would not be directly traceable to or caused by a specific prior segregative act by the board, then his test would be too narrow and inconsistent with *Wright* and *Scotland Neck*.

[18] Where the court determines that the school board has met its above-described burden, it may still be appropriate for the court (1) to replace the detailed regulatory injunction and plan with a

II. THE DISTRICT COURT IN THIS CASE DID NOT ABUSE ITS DISCRETION IN DENYING THE REQUESTED RELIEF.

In the present case, the district court denied the Pasadena School Board's motions for dissolution of the court's "no majority of any minority" injunction, for relief from the Pasadena Plan, for termination of the court's continuing jurisdiction, and for modification of the Pasadena Plan. In so doing, the court found that a completely unitary system had not yet been achieved in the Pasadena School District, and the court of appeals affirmed that conclusion. We will now demonstrate that, under application of the guidelines discussed above, that conclusion is fully supported by the record, and that therefore the district court did not abuse its discretion in denying the relief sought.

A. The Pasadena School District Did Not Instantaneously Become a Fully Desegregated Unitary System on the First Day of the 1970-71 School Year.

The School Board argues that the Pasadena Plan "effected integration in one fell swoop"; that since the institution of that plan—on the first day of the 1970-71

permanent injunction requiring the board to refrain from engaging in any action which would result in the reestablishment of the former *de jure* segregation or which would tend to resegregate students or faculty, and (2) to place the case on inactive status on its docket. That is what several district courts have done after finding that a fully desegregated unitary system has been achieved and maintained. See, *e.g.*, *United States* v. *Georgia*, N.D. Ga., Civil Action No. 12,972 (July 23, 1973) (App. 248-53); *United States* v. *County School Board of Sussex County*, E.D. Va., Civil Action No. 6060-R (July 5, 1973) (App. 254-55); *United States* v. *County School Board of Richmond*, E.D. Va., Civil Action No. 224-69-R (July 5, 1973) (App. 256-57); *Lee* v. *Macon County Board of Education*, N.D. Ala., Civil Action No. 70-251-S (July 3, 1974); *United States* v. *Georgia*, S.D. Ga., Civil Action No. 3009 (February 14, 1974). See also the district court's final order in *Swann* v. *Charlotte-Mecklenburg Board of Education*, attached as Appendix A hereto.

school year—the Pasadena system has been wholly unitary and free from officially imposed segregation and its vestiges; and that it should therefore be relieved of the desegregation remedy and judicial control (Br. 14-15). As shown on pp. 16-18, *supra*, however, a district court may refuse to dissolve a desegregation remedy if sufficient time has not passed to enable the court to determine whether the state-imposed segregation has been fully and finally rooted out and replaced by a genuine unitary system that promises to last. In *Green*, *Raney*, and *Swann*, this Court recognized the importance of such a reasonable implementation period during which the district court can evaluate the desegregation plan in practice and determine whether it is operated in a constitutionally permissible fashion. See p. 16, *supra*.

It is surely reasonable to conclude in the present case that the mere initial implementation of the Pasadena Plan, or even its operation during the 1970-71 school year, was not sufficient to allow the court to make the necessary determinations. In light of the School Board's long history of intentional segregation and discrimination, more time was needed to evaluate the plan in practice, to determine whether the Board was operating the plan in a permissible way, to ensure that all vestiges of the past segregation were eliminated, and to gain confidence that the Board could be trusted to maintain a desegregated system.[19] Hence, the Pasadena School District could not have attained and maintained unitary status instantly on the first day of the 1970-71

[19] As we have stated, the Fifth Circuit has explicitly held that a single year is not sufficient to establish a school district as a unitary system; and indeed that court requires its district courts to retain jurisdiction for at least three years. See pp. 16-17, *supra*.

school year, so as to entitle the Board to dissolution of the desegregation remedy at any time thereafter.[20]

We turn, then, to the question whether the court abused its discretion in finding that the Pasadena School District had not attained and maintained genuine unitary status by the time the Board moved for dissolution of the remedy in January 1974.

B. The District Court Was Justified in Finding That the Board Had Not Shown That It Had Attained and Maintained a Fully Desegregated System by January 1974.

In deciding whether a school board has attained and maintained a desegregated system, it is of first importance, as discussed above, for the court to determine whether the board has demonstrated that it has complied with the desegregation order and plan during the implementation period. The district court here, in denying relief, found that the Board had not shown such compliance with the injunction and the Pasadena Plan, because in the 1971-72, 1972-73, and 1973-74 school years there were schools in the Pasadena School District which had a majority enrollment of minority students.

The Board does not deny the fact that these deviations from the "no majority of any minority" standard occurred or the fact that it did not readjust student attendance areas to ensure that there would be no majority of any minority. The Board argues, however, that those deviations do not preclude the School District

[20] In any event, even if it could be said that the School District did attain unitary status for a moment in September 1970, the Board did not move for dissolution of the remedy until three and a half years later, and hence the court could justifiably consider whether that unitary status had been maintained during that period, as well as whether it was reasonably certain to continue. As we show below, the record supports a negative finding on these questions.

from having achieved and maintained genuine unitary status, and hence provided no basis for the denial of the relief sought, because (a) the original "no majority of any minority" injunction was shown by *Swann* to have been an invalid order compelling "racial balance" (Br. 12-13); (b) the subsequent deviations therefrom were due solely to demographic changes and the court's decree did not require annual reassignments of students to maintain the original "racial balance" (Br. 6-7); and (c) to the extent that the court's order and the plan did require such annual reassignments, they "piled Pelion on Ossa," for that, too, was shown by *Swann* to have been invalid (Br. 13-14). These arguments are without merit.

1. *The original "no majority of any minority" injunction is not subject to attack here and in any event was valid.*

The district court's original decree requiring that by September 1970 there be no school with a majority of any minority students is not subject to attack in the present proceeding. If the Board had wanted to challenge that requirement at the time it was imposed, it should have appealed; and if it wanted to attack the requirement after *Swann*, it should have moved the district court for modification of the requirement on that ground. Indeed, the Board now admits that it does "not seek to overturn the original decree" (Br. 13).

In any event, the requirement is not an invalid "racial quota" even after *Swann*. The Board relies primarily on the following statement from *Swann*:

> "If we were to read the holding of the District Court to require, *as a matter of substantive constitutional right*, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse." 402 U.S. at 24 (emphasis added).

In that passage, of course, as the Ninth Circuit has pointed out, "the Court was speaking only of the proof necessary to establish the existence of the constitutional violation that is a prerequisite to any judicial remedy at all." *Kelly* v. *Guinn*, 456 F.2d 100, 109-110 (1972). Once a constitutional violation is found, the district court has the duty and the discretion to formulate a remedy broad enough to eliminate the officially imposed segregation and all its vestiges. In that regard, the Court in *Swann* held specifically that the use of mathematical ratios is a valid "starting point" in the process of shaping a remedy. 402 U.S. at 25. In the companion case of *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43, 46 (1971), the Court expressed that view as follows:

> "As we have held in *Swann*, the Constitution does not compel any particular degree of racial balance or mixing, but when past and continuing constitutional violations are found, some ratios are likely to be useful starting points in shaping a remedy. An absolute prohibition against use of such a device—even as a starting point—contravenes the implicit command of *Green* v. *County School Board*, 391 U.S. 430 (1968), that all reasonable methods be available to formulate an effective remedy." [21]

Similarly here, the district court's "no majority of any minority" requirement served as a "starting point" from which the Board was to proceed in shaping the remedial plan which it was to submit. It did not impose an inflexible racial ratio or compel a particular degree of racial balance, but rather established a maximum limitation on racial separation below which variations in racial composition were permissible. As the Ninth Circuit

[21] This Court expressly approved a racial ratio as a remedial measure for faculty segregation in *United States* v. *Montgomery Board of Education*, 395 U.S. 225 (1969).

stated regarding a similar injunction in *Kelly* v. *Guinn*, *supra*, at 110:

> "The court did not impose a fixed racial ratio upon classes in the school system—some classes might have 45 per cent black students, some 15 per cent, some none. The 50 per cent figure is a ceiling for black enrollment imposed for the purpose of compelling a real beginning toward eliminating the effects of past segregative practices."

Since the district court's order requiring the initial attainment of the "no majority of any minority" standard thus did not require any fixed racial ratio or balance in any particular school, it clearly was not an impermissible measure under any reading of *Swann*. Rather, it "was within the equitable remedial discretion of the District Court" (402 U.S. at 25), as a "reasonable method" for formulating "an effective remedy" (402 U.S. at 46).

2. *The Board's arguments that the Pasadena Plan did not require annual readjustments and was invalid if it did should be rejected.*

The district court's injunction ordered the Board to submit a plan to ensure that "by or before the school year that commences in September of 1970" no school would have a majority of any minority students. Thus, the language of this order on its face simply called for a single initial reassignment of students so that the standard was met in September 1970, and did not require annual reassignments thereafter in order to maintain that standard. The Pasadena Plan, however, which was prepared and submitted by the Board and approved by the district court, provided that, as to elementary schools, "[e]ach year the [four ethnically balanced] areas will be reviewed to assure that the ethnic balance is maintained" (App. 10), and that, as to junior high schools, the attendance "boundaries may need to be changed from time to time to continue ethnic balance as established in Sep-

tember 1970" (App. 27). Thus, it appears that the plan contemplated that, while it was in effect, there should be an annual review of student attendance areas—at least for elementary and junior high schools—and a readjustment of those areas if necessary to meet the "no majority of any minority" standard.[22] Indeed, that is how the district court interpreted the plan.[23]

The Board's present contention that such a requirement was invalid under *Swann* should be rejected for several reasons. First, it must be remembered that the annual readjustment provisions did not arise from the court's injunctive order, but from the plan prepared and submitted by the Board itself. Regardless of whether the Board is correct that *Swann* precludes a court from requiring a school board to make year-by-year adjustments in the racial composition of student bodies, that decision obviously does not preclude the board itself from voluntarily adopting a plan so providing. Nor does it preclude the court from approving such a provision as part of a valid desegregation plan. Where, as here, the board has adopted such a provision in its plan and has obtained court approval of that plan, the board's failure to fulfill its plan—even if the provision involved is not required by the court—bears on the question whether the board has provided the court with a sufficient basis for confi-

[22] The schools which in the 1970-71, 1971-72, and 1972-73 school years had a majority enrollment of black students were either elementary or both elementary and junior high. See 375 F.Supp. at 1306 (App. 454).

[23] In hearings on the Board's present motions, the district judge stated from the bench:

> "I can assure you that I studied this plan and I knew the plan. I knew what I thought it was going to accomplish. And I thought that it was going to accomplish, if executed in good faith, that Pasadena would never be back in this courtroom again. Now, that [accomplishment of the plan] meant to me that at least during my lifetime there would be no majority of any minority in any school in Pasadena." (App. 270.)

dence that the board will continue maintenance of a fully desegregated system. The court here was thus justified in relying on such noncompliance in resolving that question.

Second, even if the annual readjustment provisions had been required by the court, such provisions, as applied to this case, are not precluded by *Swann*. Regardless of what the district judge said from the bench, the only annual readjustment requirements involved here—*i.e.*, the only ones that the Board failed to comply with—relate to readjustments during the implementation period that occurred before the court could determine whether or not a genuine unitary system had been attained and maintained. As shown above, *Swann* refers only to year-by-year adjustments "once the affirmative duty to desegregate has been accomplished" (402 U.S. at 32), and a provision for annual readjustments prior to that time is not precluded thereby and indeed could be warranted by legitimate and important reasons. See n.6, pp. 18-19, *supra*.[24]

Finally, even if the annual readjustment provisions of the plan were unlawful when adopted or were shown to be invalid by *Swann*, the Board's proper course of action was to appeal the initial decision or to request the dis-

[24] The district judge's remark that he interpreted the plan to require that there be no majority of any minority "at least during my lifetime" does not negate the validity of this argument. The only violations of the annual readjustment provisions that are involved here occurred during the implementation period, and the judge's remark did not affect that fact. Moreover, the court of appeals clearly and specifically disapproved the district judge's interpretation as applied to readjustments "after the court has determined that its plan has been effectively implemented and racial discrimination eliminated from the system . . . ." 519 F.2d at 438 (Pet. A11). Since that disapproval is not at issue here, this Court has no occasion to decide whether the district judge's interpretation as applied after a unitary system has been attained and maintained was inconsistent with *Swann*.

trict court to modify the plan on account of the intervening *Swann* decision. Yet the Board did not appeal the court's original decree or its approval of the Pasadena Plan, nor did it seek modification thereof or request leave to dispense with the annual readjustments. Instead, the Board simply failed to comply with those readjustment provisions. Whether the plan was valid or invalid, the Board's failure to comply, rather than following established procedures for challenge, was unwarranted. See p. 21, *supra*. It thus provided a permissible basis for the court to find that the Board had failed to show that it not only had attained and maintained a desegregated system, but could, with confidence, be trusted to continue maintenance of full desegregation without the court's continuing jurisdiction.

3. ***If the plan did not require annual readjustments, the fact that in three years there were schools with a majority of a minority was relevant to the plan's effectiveness.***

Even if the Pasadena Plan is read as not requiring annual readjustments to maintain the "no majority of any minority" standard, the deviations from that standard that occurred after the plan went into effect were nonetheless relevant on the issue whether a unitary system had been implanted. As demonstrated on pp. 22-23, *supra*, a district court is justified in refusing to dissolve a desegregation remedy if the board has not shown that in fact that remedy has proved to be an effective one to eliminate fully and permanently the officially imposed segregation and its effects. Here the Board claims that the deviations from the "no majority of any minority" standard were due solely to demographic changes. But however that may be, those deviations indicated a trend toward the reestablishment of racially identifiable schools. If the plan did not provide for annual readjustments, the court could certainly consider whether, in light of

that trend, the plan had been effective in achieving and maintaining a fully desegregated system that promised to last. Thus, regardless of whether the Board had complied with the student assignment provisions of the plan, the increase in racial identifiability caused by the presence of schools with a majority of a minority was a factor upon which the court could reasonably have relied in concluding that the Board had failed to show that the Pasadena School District was completely unitary.[25]

4. ***The Board failed to show compliance with the plan and effectiveness of the plan in areas other than student assignment.***

As we have demonstrated, it cannot be said that a truly unitary system has been implanted if the board has failed to comply with portions of the desegregation plan regarding faculty, staff, transportation, extracurricular activities, or facilities, or if the plan has not proved to be effective to eliminate the segregation and its effects in those areas. See pp. 19-20, 22-23, *supra*. Accordingly, even if the relief sought by the school board pertains only to student assignment, the board bears the burden of showing that it has complied with portions of the plan dealing with those other matters and that the plan has proved effective in all those other areas.

In the present case, the Board failed to provide such evidence and hence failed to meet its burden. To the contrary, there was evidence that the Board had violated the portions of the Pasadena Plan dealing with the selection and appointment of administrators (App. 264-65, 514-18, 606-07). Indeed, in a subsequent proceeding, the district court found that there were such violations and held the

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[25] It may be that this determination as to the effectiveness of the plan, if deemed crucial here, is more appropriately made upon a remand to the district court for application of the proper criteria and guidelines.

Board in contempt.[26] In any event, the record plainly demonstrates that the Board did not meet its burden of showing that it had complied with *all* provisions of the desegregation plan and that it had in fact disestablished *de jure* segregation and its effects in *all* the crucial areas.

C. The District Court Had a Reasonable Basis for Concluding That the Board Had Not Shown That a Fully Desegregated System Would Continue To Be Maintained After Dissolution of the Remedy.

Even if this Court concludes that the district court could not properly have found that the Board failed to show compliance with the desegregation plan and the plan's effectiveness to achieve and maintain desegregation, the Court should nonetheless affirm the district court's decision. As we have demonstrated, a genuine unitary system cannot be said to be implanted—and a district court may thus refuse to dissolve a desegregation remedy and to terminate its jurisdiction—if the school board has not established a sufficient basis for confidence that desegregation will be lasting, *i.e.*, that the board can be trusted, upon dissolution, to continue to maintain a fully desegregated system. See pp. 14-15, 24-29, *supra*. The district court here had reasonable grounds for finding that the Pasadena School Board had not met that burden.

The Board moved in the alternative for modification of the Pasadena Plan so as to allow substitution of an alternative plan. The court denied that motion, finding that the alternative plan was a "freedom-of-choice" plan and, if implemented, would result in "a large number of predictably racially imbalanced schools," including eight with over 60 percent black enrollment. 375 F. Supp. at 1307 (App. 455). Similarly, because of the avowed aim of a majority of the Board to return to neighborhood schools and to stop "forced busing" and the advocacy by

[26] A copy of that decision is attached hereto as Appendix B. The decision is now on appeal to the Ninth Circuit (No. 74-2530).

that majority of the alternative plan, there was certainly a reasonable basis for the court to conclude that complete dissolution of the injunction and Pasadena Plan and termination of the court's jurisdiction would have led to the implementation at least of the alternative plan and possibly of a plan that would increase racial separation even more.

The Board does not contest the fact that if the relief sought had been granted, it would have implemented its alternative plan. Nor does it seriously dispute the findings that that plan is essentially a freedom-of-choice plan and would predictably result in a significant increase in racial separation and racially identifiable schools. Indeed, the evidence fully supports those findings.[27] Thus, it is clear that in actual fact the court was presented on the Board's motion with a choice between the Pasadena Plan and a plan that would result in increased racial separation. We submit that the court did not abuse its discretion in refusing to allow the latter.

As the Board contends, this Court's decision in *Green* did not outlaw all freedom-of-choice plans (Br. 22). But that cannot negate the fact that the plan which the Board would implement upon dissolution of the present remedy would allow and would predictably result in an increase in racial separation. In such a case, as shown

[27] The essential feature of the plan is the parent's freedom of choice to pick a school from among several (six to eight depending on the area) (375 F. Supp. at 1310, App. 462). Moreover, the plan gives priority to students living in the neighborhood of a school (App. 479); and if choices were made on a neighborhood basis, many schools would plainly be racially identifiable (App. 329; see p. 42, n. 28, *infra*). The plan itself recognizes that "the ethnic balance at some sites may be altered from what it is at present" (375 F. Supp. at 1310, App. 462), and it specifically contemplates the situation where a school's "ethnic profile . . . deviate[s] significantly from the District-wide ethnic profile" (*id.*). Finally, the President of the Board testified that he could not say that the plan would result in a school district "in which there might not be any racially identifiable schools" (App. 503).

above, the Board was required to demonstrate not only that its alternative plan was not motivated by any segregative purpose, but that the effect of that plan would not be to impair or undo the disestablishment of the former officially imposed segregation by recreating, or permitting reemergence of, the effects of that segregation. The district court had a reasonable basis for concluding that the Board had not met that burden.

As in *United States* v. *Scotland Neck Board of Education*, *supra*, the disparity in the District schools' racial composition that would predictably result under the alternative plan would be "substantial," and the "traditional racial identities of the schools in the area would be maintained" (407 U.S. at 490). The district court found that, under that plan, at least eight schools would initially be over 60 percent black (whereas the District as a whole was only 40 percent black), and those eight schools were all racially identifiable black schools prior to the 1970 decree (App. 141-45). Moreover, the evidence indicated that if school choices under the alternative plan were made on a neighborhood basis—as seems in large measure likely, particularly by white students and in light of the preference to be given to students living in the neighborhood of a school (App. 479)—at least 20 of 25 elementary schools in the District would plainly be racially identifiable, reflecting their racial identifiability prior to 1970.[28] This substantial increase in racial separation in

[28] An exhibit submitted by the Government in the 1974 proceedings shows these schools' racial composition if students attended the schools in their own neighborhoods (App. 329). That exhibit reveals that seven of these schools would be over 85 percent white (and less than 5 percent black), another five of them over 70 percent white (and less than 10 percent black), and another 66 percent white (and 1.7 percent black), and that four such schools would be over 80 percent black and another three of them over 70 percent black. A 1970 exhibit showing the racial composition of the schools in the 1966, 1967, and 1968 school years reveals that these schools' racial identifiability was the same in those years (App. 141-45).

and racial identifiability of schools, accompanied by the reemergence of the pre-1970 racial identities of the schools, demonstrates that the alternative plan would have the impact of recreating the effects of the prior officially imposed segregation. As in *Scotland Neck*, therefore, the district court here had a justifiable basis for finding that the effect of the Board's alternative plan would be to impair the complete disestablishment of segregation.[29]

Moreover, other factors are present here—as they were in *Wright* v. *Council of the City of Emporia*, *supra*—which would further support the same conclusion. Not only would the Board's alternative plan predictably lead to increased racial separation and to the reemergence of formerly racially identifiable schools, but that effect could be intensified if white parents who had previously fled the system as a reaction to the Pasadena Plan would return and send their children to schools in their generally white neighborhoods. Furthermore, if, as expected, the Board put its alternative plan into effect immediately upon dissolution of the desegregation order, and if, as also expected, large numbers of white students would abandon the presently integrated schools for the predominantly white schools in their own neighborhoods,

[29] Furthermore, in the circumstances of this case, the substantial increase in racial separation and racial identifiability that would result from the Board's plan gave the district court sufficient cause to question seriously the Board's claim that that increase was not motivated by any segregative purpose. See p. 26, n. 16, *supra*. In light of the Board's long history of intentional racial segregation and discrimination and its present avowed opposition to the plan which it had submitted and the court had approved, the district court may justifiably have found that the Board had failed to meet its burden of showing that the substantially increased racial separation that would arise under its alternative plan was not motivated by any segregative intent. Perhaps, however, if a determination on this question is considered crucial to this Court's decision, the appropriate course may be to remand the case to the district court for application of the proper standards.

the effect would be the restigmatization of black students as inferior, with the consequent psychological harm. It would be too much to ask these students to believe that the sudden racial effect of the Board's new action was benign and unassociated with the prior *de jure* segregation. Thus, the district court could rationally conclude that the Board's action would recreate the effects of the officially imposed segregation and hence would impair the disestablishment of such segregation and the continued maintenance of a unitary system.

In any event, in addition to the effect of the Board's alternative plan, the fact that a majority of Board members were openly opposed to "forced busing" was relevant to whether the court could have confidence that a desegregated system would continue to be maintained. It seems clear in light of the demographic makeup and patterns in the Pasadena School District that some busing (even if not the amount required by the Pasadena Plan) would be necessary and could lawfully be required as a remedy to eliminate the officially imposed segregation and its effects. While the Board members may well have had the right to speak out against such busing and to run for office and be elected on that platform, their avowed opposition to any forced busing indicates that they would act on that view if given the chance; and the court had every reason to take that indication into account in making its determination as to confidence. When the court considered this factor together with the Board's history of intentional segregation and the foreseeable effect of the alternative plan, it could permissibly conclude that the Board had not established a sufficient basis for confidence in the lasting maintenance of desegregation, and thus that a genuine unitary system had not yet been implanted.

CONCLUSION

For all these reasons, we submit that the district court did not abuse its discretion in denying the motions of the Pasadena School Board. The record establishes an adequate basis for finding that the Board failed to demonstrate that it had attained and maintained a completely desegregated unitary system that promised to survive without the court's supervision. While the district court specified certain reasons sufficient for denying the relief sought, the Board's failure to meet its burden is reason enough to justify that court's decision. Accordingly, we urge this Court to affirm the decision of the court below.[30]

In the alternative, if this Court should conclude that the district court did not apply the proper criteria, or

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[30] The Board has suggested that this case may be moot (Br. 23-27). As to the individual respondents, it relies primarily on *Board of School Commissioners of Indianapolis* v. *Jacobs*, 420 U.S. 128 (1975). But regardless of the effect of that case on the status of the individual respondents, the Government's intervention pursuant to Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000h-2, prevents this case from being moot. Under that section, the United States may intervene when "the Attorney General certifies that the case is of general public importance." Thus the Attorney General is authorized to intervene in an action to protect the continuing public interest as well as the interest of the private plaintiffs. The statute further provides that "the United States shall be entitled to the same relief as if it had instituted the action." The Board contends that the relief to which the Attorney General is entitled is limited by the proviso in 42 U.S.C. § 2000c-6 stating that "nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils . . . ." This Court, however, has twice construed that language neither to restrict the existing powers of the federal courts to enforce the Equal Protection Clause nor to withdraw from the courts their historic equitable remedial powers. *Swann* v. *Charlotte-Mecklenburg Board of Education*, *supra*, 402 U.S. at 17-18; *McDaniel* v. *Barresi*, 402 U.S. 39, 41-42 (1971). Therefore the district court was entitled to accord to the United States whatever relief it would have granted the private plaintiffs. See, *e.g.*, *United States* v. *Watson Chapel School District No. 24*, 446 F.2d 933, 937-38 (8th Cir. 1971).

APPENDICES

APPENDIX A

IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE WESTERN DISTRICT
OF NORTH CAROLINA
Charlotte Division

Civil No. 1974

JAMES E. SWANN, et al.,
Plaintiffs,

—VS.—

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, et al.,
Defendants.

FINAL ORDER
(SWANN SONG)

On July 10, 1974, defendants filed a report covering certain changes in the proposed 1974-75 pupil assignment plan, and requested the court to dismiss the suit. On July 30, 1974, the court entered an order approving the revised plan under specified conditions, and expressing appreciation to the Board, the Citizens Advisory Group and the school staff people and others who had worked to make it possible. The order closed with the comment that, after May 1, 1975,

> ". . . assuming and believing that no action by the court will then be required, I look forward with pleasure to closing the suit as an active matter of litigation . . ."

Since early 1974, the case has been quiet. No new or old issues have been raised by the litigants or decided by the court. The new Board has taken a more

positive attitude toward desegregation and has at last openly supported affirmative action to cope with recurrent racial problems in pupil assignment. Though continuing problems remain, as hangovers from previous active discrimination, defendants are actively and intelligently addressing these problems without court intervention. It is time, in the tenor of the previous order, to be "closing the suit as an active matter of litigation . . ."

Dismissal is neither usual nor correct in a case like this where continuing injunctive or mandatory relief has been required. Facts and issues once decided on their merits ought, generally, to remain decided. This case contains many orders of continuing effect, and could be re-opened upon proper showing that those orders are not being observed. The court does not anticipate any action by the defendants to justify a re-opening; does not anticipate any motion by plaintiffs to re-open; and does not intend lightly to grant any such motion if made. This order intends therefore to close the file; to leave the constitutional operation of of schools to the Board, which assumed that burden after the latest election; and to express again a deep appreciation to the Board members, community leaders, school administrators, teachers and parents who have made it possible to end this litigation.

The duty to comply with existing court orders respecting pupil assignment of course remains. So, also, does the duty to comply with constitutional and other legal requirements respecting other forms of racial discrimination.

Ghosts continue to walk. For example, some perennial critics here and elsewhere are interpreting Professor James Coleman's latest dicta in support of the notion that courts should abandon their duty to apply the law

in urban school segregation cases. Coleman is worried about "white flight," they say; school desegregation depends on Coleman; therefore the courts should bow out; "*cessante ratione, cessat ipsa lex,*" they say.

The local School Board members have not followed that siren. Perhaps it is because they realize that this court's orders, starting with the first order of April 23, 1969, are based, not upon the theories of statisticians, but upon the Constitution of the United States, and because they recall and are prepared to follow the law of this case which, as to Coleman, is contained in the order of August 3, 1970 (318 F.Supp. 786, 794, W.D.N.C. 1970), as follows:

> "*The duty to desegregate schools does not depend upon the Coleman report, nor on any particular racial proportion of students* [emphasis from original].—The essence of the *Brown* decision is that segregation implies inferiority, reduces incentive, reduces morale, reduces opportunity for association and breadth of experience, and that the segregated education itself is inherently unequal. The tests which show the poor performance of segregated children are evidence showing one result of segregation. *Segregation would not become lawful, however, if all children scored equally on the tests.*" (Emphasis added.)

I do not anticipate a revival, in the Charlotte-Mecklenburg school system, of this and other questions which have already been exhaustively (and expensively) litigated and definitively answered.

With grateful appreciation to all who have made possible this court's graduation from *Swann*, it is therefore

ORDERED:

1. That this cause be removed from the active docket.
2. That the file be closed.

This 11 day of July, 1975.

/s/ James B. McMillan
JAMES B. McMILLAN
United States District Judge

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil No. 68-1438-R

NANCY ANNE SPANGLER, et al.,
Plaintiffs,

and

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

vs.

PASADENA CITY BOARD OF EDUCATION, et al.,
Defendants.

JUDGMENT, OPINION AND ORDER

Petitioner, Charles Johnson, the father of two school age children in attendance at the Pasadena Unified School District, has moved the court for an order to show cause why the respondent Pasadena City Board of Education (hereinafter Board)[1] should not be held in civil contempt for its failure to comply with the provisions of the order of this court concerning the desegregation of that school system in general and hiring of administrative personnel in particular. Accordingly, the moving party objects to the appointments of Willard A. Craft as Acting Assistant Superintendent of Elementary and Secondary Education, John F. McHale as Acting Assistant Superintendent for Personnel

[1] The Board is currently composed of Henry Marcheschi, President, Drs. Henry S. Myers, Jr. and Richard Vetterli, and Messrs. Wyman W. Newton and Samuel Sheats. This order to show cause is only directed to the first four Board members just enumerated since Mr. Sheats took no part in the activities which allegedly amount to contempt of this court's order.

and Supportive Service, Mrs. Anna Mary Hession as Acting Administrative Director of Elementary Curricumum, Ms. Louise Coover as Principal of Wilson Junior High School, and Dr. John Mike Kellner as Principal of the "Fundamental School." He requests this court to declare said appointments void *ab initio*, to order the respondents to institute hiring procedures in conformity with this court's original order of January 22, 1970 (hereinafter known as the Pasadena Plan), and to level such sanctions, including reasonable attorneys fees, as this court feels appropriate to punish the Board's failure to comply with the original hiring procedures set forth in the Pasadena Plan. *See, Spangler* v. *Pasadena City Board of Education* 311 F.Supp. 501 (C.D. Cal. 1970).

In connection with the hiring of Administrative personnel, the Pasadena Plan provides for "[a] positive recruitment program paralleling the teacher recruitment program [which] will actively seek out minority group administrators, supervisors, and counselors who are interested in employment with the Pasadena Unified School District." [2] Nevertheless, in contravention of these es-

[2] In its pertinent part, the Recruitment and Selection of Administrators Plan stipulated that ". . . bulletins concerning job opportunities will be sent to college and university placement offices and other professional organization offices. In these bulletins, minority candidates will be especially encouraged to apply . . .

"Vacancies in these positions are filled from eligible lists established by examination. At the present time the examination consists of an oral interview, evaluation of training and evaluation of experience by a committee appointed for this purpose. Announcements for these positions are distributed to all school personnel, to college and university placement offices in Southern California and to a mailing list recommended by the Department of Intergroup Education . . . . The announcement contains the title of the position, the minimum requirements for entrance, desirable qualifications, job duty statement and the salary . . .

"When vacancies occur, the top five names on the eligible list are referred to the appointing authority for consideration. All appointments must be approved by the Superintendent."

tablished procedures, the Board appointed Messrs. Craft and McHale, and Mrs. Hession on July 10, 1973 to their respective positions by a vote of three to two, with Messrs. Sheats and Marcheschi, and Superintendent Cortines, the non-voting Board member, dissenting in the face of the alleged illegality of the action. Thereafter, the Board appointed Dr. Kellner and Ms. Coover to their respective principalships; but, on the occasion of these latter two appointments, only Mr. Sheats dissented, with Mr. Marcheschi and Superintendent Cortines, relying on the advice which they had solicited from Los Angeles County Counsel, being then satisfied of the legality of the Board's actions.

It is beyond question that, if the Board had been acting upon permanent administrative appointments, such appointments would have been illegal in light of the Board's failure to advertise such positions, to submit ensuing applications to a committee for its evaluation and determination, to act upon recommendations stemming from that committee and from the Superintendent, and finally, to take affirmative steps to ensure minority applications for these positions. It is the Board's current contention relative to these appointments that their "temporary" nature precluded application of the normally prescribed appointment procedures and further justified the reliance of the Board upon the advice of Los Angeles County Counsel to the effect that said appointments were, in fact, legally within the purview of the Pasadena Plan. (*See*, Marcheschi Affidavit, p. 3)

The Standing of Petitioner

Initially, it is incumbent upon the court to determine whether the petitioner has the requisite standing to bring the instant order to show cause regarding civil contempt to the court's attention; for the petitioner is neither the named representative of the class of school

aged children affected by the original Pasadena Plan nor counsel of record for that class.

Relying on *Williams* v. *Iberville Parish School Board* 273 F.Supp. 542 (E.D.La. 1967), the defendants maintain that, where, as here, representation of the class is adequate and compatible with the interests of the entire class, no individual member of the class may appear *in propria persona* to vindicate an alleged violation of class rights. However, the court in *Williams*, *supra*, merely indicated that civil contempt proceedings may be instituted only by "parties primarily in interest" in the litigation or by parties who ". . . have in any way been damaged by the alleged disobedience of which they complain." *Id.* at 545. In addition, as the Ninth Circuit has pointed out in *Gregory* v. *Litton Systems, Inc.*, 472 F.2d 631 (1972), "broad power [has been] given to the district court to make various orders for the protection of a class. Fed.R.Civ.P. 23(d)." It appears axiomatic, therefore, that the father of two school age children, who is acting, in essence, as a guardian ad litem and whose children are affected by an order of this court, has a "primary interest" in ensuring that the orders of the court relative to his childrens' educational opportunities are dutifully enforced. As a parent, petitioner has standing and is permitted to make an appearance in this action to apprise the court of any non-compliance with said order.[3] (*Compare, Federal Trade Commission* v. *A. McLean & Son* 94 F.2d 802 (7th Cir. 1938) [where the court noted that "the protection of private rights" is cardinal to a civil contempt proceeding] *with McCrone* v. *U.S.A.* 307 U.S. 61,

[3] For the record it should be noted that the plaintiff-representatives of the class joined the petitioner's motion to hold respondents in civil contempt of this court's 1970 ruling. Thus, even if the petitioner were deemed to have insufficient standing to prosecute this contempt proceeding, the court could nonetheless consider the matter in light of the plaintiff's participation herein.

63 n.4 (1939); *See also* Kaplan, *1966 Amendments of the Federal Rules of Civil Procedure* (I), 81 *Harv. L.Rev.* 356, 392 n.137 (1967); Practicing Law Institute, *Class Actions* at p. 178 (1973).

The Violation

Turning then to the merits of the case, the court notes that the Pasadena Plan, relative to the filling of administrative positions, embraced a ". . . total of 133 non-teaching certified assignments [which] include *all* school administrators, directors, supervisors, consultants, counselors, school psychologists and others . . ." (emphasis supplied). The administrative posts, which the respondents summarily filled in alleged violation of the broad mandates of the Pasadena Plan and which form the focal point of the instant inquiry, clearly fall within the parameters of the court's directives concerning the hiring of administrative personnel. Yet the Board, mainly through the protestations of its President, Mr. Marcheschi, indicates that "none of the past or present Board members, with one exception, [*i.e.*, Mr. Sheats,] has ever suggested that the Board was required to follow the procedures set forth in the Recruitment and Selection of Administrators Section of the Pasadena Plan when making or approving temporary appointments of persons to acting administrative positions or permanent appointments of persons reporting directly to the Superintendent." (Marcheschi Affidavit, p. 2). In essence, then, it is the Board's position that its lack of intent in failing to comply with the court's order, coupled with its reliance on the advice of counsel and the insufficiency of the evidence necessary to prove a violation, precludes the possibility of a contempt citation in the instant matter.

In general, the lack of malicious intent or the presence of a good faith belief in the rectitude of one's

position cannot serve to "sterilize conduct otherwise contemptuous." *Babee-Tenda Corp.* v. *Schorco Manufacturing Co.* 156 F.Supp. 582, 584 (S.D.N.Y. 1957); *See also, Land* v. *Dollar* 190 F.2d 623 (D.C. Cir. 1951), *cert. dism. per mot of petitioner* 344 U.S. 806 (1952); *Sucrs. De A Mayal & Co.* v. *Mitchell* 280 F.2d 477 (1st Cir. 1960), *cert. den.* 364 U.S. 902; *Falk* v. *Standard Business Forms, Inc.*, 270 F.Supp. 147 (D.C.N.C. 1967); *Rosentiel* v. *Rosentiel* 278 F.Supp. 794 (D.C.N.Y. 1967); *Landman* v. *Landman* 354 F.Supp. 1292 (D.C.Va. 1973). Likewise, the Board's reliance on the advice of the Los Angeles County Counsel, who in a rather cryptically worded letter dated July 31, 1973 erroneously concluded that the Board's appointments did no offense to the Pasadena Plan, may not serve to immunize the Board from acts which are contemptuous in and of themselves.[4] *Land* v. *Dollar, supra; U.S.* v. *Seavers* 472 F.2d 607 (6th Cir. 1973); *Heyman* v. *Kline* 344 F.Supp. 1088 (D.C.Conn. 1970), *aff'd in part and rev'd. in part* 456 F.2d 123 (2d Cir. 1972), *cert. den.* 409 U.S. 847 (1972); *Theriault* v. *Carlson* 353 F. Supp. 1061 (D.C.

[4] The Board seems to have taken further, albeit unwarranted, comfort in the assurances proferred by the Department of Health, Education and Welfare that federal funding would continue to flow to the Pasadena schools if the Board honored certain commitments to H.E.W. concerning the continued desegregation of the school system. The Board's agreement with H.E.W. differs from the provisions set forth in the Pasadena Plan in a number of instances, most of which concern the mailing lists to be obtained from the Department of Intergroup Education, the "minimum" as opposed to the "main" requirements under the plan; the elimination of the need to "positively seek out" minority employees, and the number of individuals who are to sit on the administrative review board. It should go without saying that neither H.E.W.'s understanding of this court's orders, nor its representations to the Board in regard thereto, can serve to permit the Board to act with impunity in contravention of those orders. Neither the Pasadena City School Board nor the Department of Health, Education and Welfare are the final arbiters of the intendment of this court's orders.

Ga. 1973); *U.S.* v. *Wefers* 314 F.Supp. 137 (D.C.N.H. 1970) *vacated* 435 F.2d 826 (1st Cir. 1970). It should be noted, however, that both the presence of a bona fide belief in the rectitude of one's actions and the reliance upon the advice of counsel may operate to mitigate the severity of the contempt sanction. *U.S.* v. *Johnson* 52 F.Supp. 382 (N.D.N.Y. 1943).

Yet, the Board's effort to circumvent the thrust of the Pasadena Plan by making "temporary" appointments which, under their stated terms, conceivably could have been renewed on a yearly basis, actually operates as a two-pronged assault upon the Board's present position; for not only does this conduct comprise acts in contempt of this court's order but also, in light of a majority of the Board's expressed opposition to the Pasadena Plan, appears to preclude any element of good faith in connection with it. *See, Spangler* v. *Pasadena City Board of Education* —— F.Supp. —— (C.D.Cal. 1974). Thus, under the guise of making "temporary" administrative appointments of a continuing nature, the Board could "permanently" frustrate the aims of the Plan relative to the hiring of minority administrators. Constitutionally, this court cannot and will not abide the transparency of such an action.

The Board maintains, however, that the evidence adduced by the petitioner is not of a "clear and convincing" nature and is incapable, therefore, of supporting a civil contempt citation. While it is generally believed that the burden of proof necessary to support a claimed civil contempt citation must be of a "clear and convincing" nature, [*Washington* v. *Central of Georgia Ry. Co.* 174 F.Supp. 33 (M.D.Ga. 1958), *aff'd. sub. nom. Marshall* v. *Central of Georgia Ry. Co.* 268 F.2d 445 (5th Cir. 1959), *cert. den.* 361 U.S. 943 (1959); *Hart Schaffner & Marx* v. *Alevander's Dept. Stores, Inc.*, 341 F.2d 101 (2d Cir. 1965); *Stringfellow* v. *Haines*, 309 F.2d

910 (2d Cir. 1962); *N.L.R.B.* v. *Alamo Express, Inc.*, 395 F.2d 481 (5th Cir. 1968); *American Optical Co.*, v. *Rayex Corp.* 291 F.Supp. 502 (S.D.N.Y. 1967), *aff'd.* 394 F.2d 155 (2d Cir. 1968), *cert. den.* 393 U.S. 835 (1968); *Rosentiel* v. *Rosentiel, supra; Benner* v. *Philadelphia Musical Soc., Local 77*, of the *American Federation of Musicians* 233 F.Supp. 108 (E.D.Pa. 1964)], the evidence adduced in the course of the instant hearing was uncontroverted to the effect that the acts of which the petitioner currently complains actually occurred. Since the Board admits to having made the appointments now under scrutiny and since the defenses asserted by the Board can avail it little, there only remains for the court to appraise the legal effect of the appointments in light of the concepts envisioned in the Pasadena Plan.

Proposal to Purge

Notwithstanding all the foregoing, the Board informs the court—and quite rightly—that the purpose of a civil contempt proceeding is actually to secure compliance with a lawful court order and not to punish its initial violation. *Gompers* v. *Buck's Stove & Range Co.* 221 U.S. 418 (1911); *Brotherhood of Locomotive Firemen & Engineermen* v. *Bangor & A. R. R.* 380 F.2d 570, 581 (D.C. Cir. 1967), *cert. den.*, 389 U.S. 327 (1967); *De Parq* v. *U. S. District Court* 235 F.2d 692 (8th Cir. 1956); *N.L.R.B.* v. *Rath Packing Co.* 130 F.2d 540 (8th Cir. 1942). Accordingly, the Board reasons that its instructions to the Superintendent on May 7, 1974 to forthwith bring the school district relative to the disputed administrative appointments into full compliance with the provisions of the Pasadena Plan, coupled with the actual advertising of these positions as specified by the Plan, serve to purge the contempt of this court's order, if any contempt there were. Yet, it was not merely the Board's failure to advertise the administrative positions under scrutiny which comprises its contemptuous

behavior but rather its *making* of the appointments, *absent* the procedures specified in the Plan.[5] Thus, the purportedly purgative actions of the Board—unaccompanied, as they are, by a vacating of the unlawful appointments—really are tantamount to nothing more than a *proposal* to purge the contempt and, as such, do not serve as an effective defense to the Board's initial (and continuing) contempt of the court's order as enunciated in the Pasadena Plan.

The Purgation

As the preceding analysis readily reveals, this court has determined that the Pasadena City Board of Education is in contempt of the mandates of the Pasadena Plan.[6] As a consequence, the Board shall within 5 days of the filing of this opinion vacate the disputed appointments and otherwise bring itself into conformity with the Pasadena Plan as more fully specified herein or, in lieu thereof, to pay $500.00 per day until such time as the Board complies with the orders of this court as they relate to the hiring of administrative personnel.

Petitioner has, by his actions herein, brought to the attention of the court what could conceivably be a hiatus in the administrative functions of the Pasadena Unified School District. Since no suggestion for modification has been forthcoming from the Board to obviate any future misunderstanding as to the parameters of the Pasadena Plan as it pertains to "temporary" or "acting" appointments of all administrative vacancies, the Pasadena Plan is now modified by the Court in the following respects:

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[5] Once again acting upon the advice of the Los Angeles County Counsel, the Board did not vacate the illegal appointments in question since it felt that an initiation of the prescribed procedures was all that was minimally required to purge the contempt.

[6] *See*, n.1, *supra*.

Modifications in Procedures for the Selection of Temporary Administrative Personnel

1. All administrative vacancies may be filled by temporary appointment by the Superintendent of Schools, but such appointments shall terminate 30 days subsequent thereto unless such appointment shall be extended for 30 additional days by action of the Pasadena City Board of Education. After this time, position shall be filled according to the Personnel Selection Procedure enunciated in the Pasadena Plan.

2. All such "acting" or "temporary" administrative appointments shall be approved by a majority of an Administrative Appointments Board, comprised of 3 members selected by a vote at large of the entire faculty and administration of the Pasadena Unified School District and one member appointed by the Superintendent of Schools of the Pasadena Unified School District and one member appointed by a majority of the members of the Pasadena City Board of Education.

3. Notwithstanding the provisions of paragraph 2 of this Section, any extension of the 30 day termination period relative to temporary or acting administrative personnel, attempted to be undertaken by the Pasadena City Board of Education, shall be approved by the Administrative Appointments Board in order to be effective.

4. Under the guidelines set forth in this Section, no temporary or acting administrative personnel may serve in that capacity for more than 60 days except upon unanimous concurrence of the Administrative Appointments Board which shall in no event be given for a period to exceed an additional 90 days.

5. The district maintains a policy of no discrimination in employment because of race, creed, color, age, sex, marital status, national origin or political beliefs.

Attorney's Fees and Conclusion

While it is true that the petitioner has performed a valuable public service by calling the Board's peccadilloes to the attention of this court, it does not seem equitable that he, as an attorney at law impregnated with the public trust, should receive payment for his vindication of both a private and a public right. His actions comport with the highest mandates of the legal profession, and he should, therefore, take solace in the knowledge that he has contributed to the continuation of equal educational opportunities in Pasadena.

Except as to attorney fees, the petitioner's motion is hereby granted.

DATED: August 12, 1974

/s/ Manuel L. Real
MANUEL L. REAL
United States District Judge

Supreme Court, U. S.
FILED
FEB 2 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-164

PASADENA CITY BOARD OF EDUCATION, *et al.*,
Petitioners

vs.

NANCY ANNE SPANGLER, *et al.*,
Respondents,

and

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief of Mexican American Legal Defense and Educational Fund, as Amicus Curiae

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1975

No. 75-164

PASADENA CITY BOARD OF EDUCATION, et al.,

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Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, AS AMICUS CURIAE

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By consent of the Petitioners and the Respondents, the Mexican-American Legal Defense and Educational Fund, Inc., files this brief as Amicus Curiae.

INTEREST OF THE AMICUS CURIAE

The Mexican American Legal Defense and Educational Fund (MALDEF), is a national, non-profit, non-partisan organization established in 1968 to secure and advance the civil rights of Mexican Americans through litigation and education. Since its inception, MALDEF has actively challenged practices which deny educational opportunity to Mexican Americans, including practices which result in segregation of Mexican American school children. This Court and lower federal courts have recognized that familiar practices of school segregation have been applied to Mexican Americans as well as to Black Americans. See, e.g., Keyes v. School District No. 1, Denver, Colorado, 413 U.S. 189 (1973); United States v. Texas Education Agency, Austin Independent

School District, 467 F.2d 848 (5th Cir. en banc 1972), Cisneros v. Corpus Christi Independent School District, 467 F.2d 142 (5th Cir. en banc 1972), cert. denied 413 U.S. 920 (1973). Amicus believes that the case at bar raises questions going to the vitality of the federal courts' power to provide adequate relief from the effects of such discriminatory practices. Moreover, the disposition of the case may affect ongoing desegregation litigation on MALDEF's education docket.[1/] For these reasons MALDEF notes the importance of the case at bar to other racial or ethnic minorities, and urges the Court to affirm the judgment below.

ARGUMENT

Introduction

This brief will not address the first two of the Questions presented by Petitioners' brief, viz, whether a District

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1. For example, Alvarado v. El Paso Independent School District, W.D. Tex. No. EP-70-CA-279; and Mendoza v. Tucson School District No. 1, D. Ariz. No. 74-204-TUC-WCF.

Court may "impose an absolute requirement of racial balance for all schools," or require a school district "continuously to maintain . . . a specified and permanent racial balance. . . ." (Pet. 2) First, it is not at all clear that the district court's unappealed 1970 order did impose such a requirement. It did contain that guideline, but read in context, it essentially ordered a plan to be designed meeting those general criteria. The Petitioners designed a plan which indeed met the criteria precisely. But whether those criteria were merely a "starting point for analysis" or a "rigid formula" was never really tested inasmuch as the Petitioners' own plan never sought permission to vary from the criteria. That is, the order's "rigidity" was never tested.

In any case, to the extent that the unappealed order can be so read and whether or not, if so read, such an order would be inconsistent with this Court's decision in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1970), is not really

an issue in the present posture of this case. The Court of Appeals "expressly disapprove[d] such portions of the record as suggest that the district court interprets his injunction to require continuous annual redistributing" (Pet. App. A11) to maintain racial balance. In other words, as we read the record in this case, Petitioners are not now required to maintain any particular racial balance in their schools. All that they are required to do is to operate a unitary system.

The remaining issues that this brief will address seem to us simple, but yet important.

Pasadena, like many hundreds of other school systems, was found to have illegally segregated its students. The District Court's 1970 findings and order were unappealed, presumably because the school board felt it legally futile to do so. Pursuant to the 1970 order, the School Board designed its own desegregation plan and sought the District Court's approval of the plan it had designed. It was

approved and its implementation ordered. The order requiring implementation of its plan was never appealed, presumably because the plan was of its own decision.

In the years 1970-74, the School Board's composition was changed by election, so that a majority of that board now consists of persons elected to the Board on platforms consisting of thinly veiled and sometimes open avowals to resegregate the school system.

The present proceeding arose in the form of a motion by the new Board requesting that the District Court terminate its continuing supervision over the board or, alternatively, that the Court permit the board to scrap its own implemented desegregation plan and substitute a new plan of its own design. As both courts below found, the new plan was intended, designed and would have the almost certain effect of reimposing racial segregation on all schools in the school system. The Board sought justification for its motion in the wholly frivolous grounds that it has

discharged its constitutional duty to operate a unitary school system by having achieved unitary status momentarily, and having once so achieved it, is now free, or ought to be now free, to reimpose a regime of segregated schools.

Part A of this Brief will discuss whether Petitioners are correct in asserting that the District Court must relinquish jurisdiction in this school desegregation case, where the record establishes that the first thing that the Board will do, if jurisdiction is relinquished, is to reimpose segregation in its school system.

Part B of this brief will discuss whether Petitioners are correct in asserting that their constitutional duty to operate a unitary school system is discharged by the achievement of momentary unitary status, after which achievement they are thereafter free to adopt a new pupil assignment plan that is designed to and will predictably result in rigidly segregated schools.

A. The District Court Did Not Abuse Its Discretion When It Denied The School District's Motion To Be Freed of Judicial Supervision Where That Refusal Was Based On Record Evidence That The First Act Of The District, If Freed Of Supervision, Will Be to Resegregate Its Schools.

The District Court did not abuse its discretion when it denied the school district's motion to be relieved of judicial supervision since that refusal is based on a record that established that the first act of that school district, if so relieved of supervision, will be to resegregate its schools.

The appropriate time for cessation of judicial supervision over a school system which has been ordered to desegregate must depend on the facts of each case in which the issue arises. Obviously, a desegregated school system, once segregated by law, is not, by reason of that former segregation, thereafter required to remain under judicial injunction forever. See Swann, supra, 402 U.S. at 31-32.

However, it is equally obvious that a District Court "should retain jurisdiction in school segregation cases to insure. . .that the goal of a desegregated, non-racially operated school system is. . . finally achieved." Raney v. Board of Education, 391 U.S. 443, 449 (1968) (emphasis added). This is, of course, but application of traditional equity principles to school segregation cases. In these, as in all other equity cases, a judicial injunction, once imposed, ought not be dissolved unless "the dangers, once substantial, have become attenuated to mere shadows," United States v. Swift & Co., 286 U.S. 106, 119 (1932).

On the unique facts of this case, it is simply incontestable that but for the continued jurisdiction of the District Court the goal of desegregated schools would only be fleetingly achieved and certainly not finally achieved. On the facts of case, it is obvious that the dangers of resegregation by Board action have not "become attenuated to mere shadows."

The new Board members have evidenced their intent to resegregate the Pasadena schools repeatedly. Their election platforms left little doubt as to their intentions. See J.A. 272-96. The new President of the Board and principal architect of the alternate plan now in issue, has designed at least three other such plans, all of which were intended to resegregate the schools. One of such plans even contemplated creation of separate white and black educational subdistricts within the Pasadena school district. J.A. 570, 575. The Board President testified that the Board plan was designed to "address ourselves to our customers. . .who have left our school system for private schools" (J.A. 499) and who would continue the "white boycott of our school system" (J.A. 502) unless permitted to attend neighborhood schools, which, given Pasadena's residential segregation, would result in racially identifiable schools (J.A. 329). In short, the intent of the board is to mollify "Caucasian families" (J.A. 502) by adopting, as soon as possible, a plan which would return whites to disproportionately white schools and blacks to black schools, i.e., to return to operation of a system in which most, if not all, schools would be racially identifiable.

The Petitioners' brief, pp. 18-20, misses completely the point of this record evidence. The question is not whether such speech "can, within the confines of the First Amendment, be made into a violation of the school desegregation decree." Rather, the question raised by this proof of intent is whether, in the face of such proof, it can be said that the dangers of state-imposed segregation in Pasadena "once substantial have become attenuated to mere shadows." Swift, supra. Obviously, given that intent, they have not.

Of equal importance, the evidence of purpose or intent to segregate is often a central, if not the sole, criteria for distinguishing de jure from de facto segregation. See Keyes v. School District No. 1, Denver, Colorado, 413 U.S. 189 (1973). Where, as here, a School Board

evidences clear intent to resegregate its schools, and requests freedom from judicial restraint in order to do so, it is impermissible to suggest that a district judge's refusal to grant that freedom is an abuse of his discretion.

The record evidence is not limited to those statements of intention, however, even though those statements by state officials were, in context, the type of "stimulant to racial prejudice" of which this Court spoke in Strauder v. West Virginia, 100 U.S. 303 (1880). Here, these statements of intent were accompanied by deeds suited to the words. The Board violated the plan terms of the desegregation order by appointing whites to high level administrative positions at non-public meetings of the Board and without prior public announcements of the available positions (J.A. 265), and it adopted the various proposed alternative plans without consultation with its only black member (J.A. 264-7). It has consistently attempted to undermine the operation of the present integrated school

plan (J.A. 458).

Most important, however, are the details of the Board's new plan. These details are discussed more fully in Part B hereof. For present purposes, it is enough to note that it would render most of the district's schools racially identifiable. Since the stated intention of the Board is to produce such schools, and their proposed plan, which they would adopt given the freedom to do so, is calculated to produce such schools in order to sell them to "Caucasian families," it would be irresponsible to relieve the district of judicial supervision at this time.

It is particularly ironic, in this case, that Petitioners base their request for relief from judicial supervision on the argument that the 1970 plan, as implemented, has resulted in a unitary system. The irony, of course, results when the Petitioners, in the next breath, admit that the sole purpose for which they seek relief from judicial supervision is to

scrap the very same plan they claim re-resulted in their unitary status. The final irony is that Petitioners then propose to replace their present "unitary" plan with one which resembles, in design and effect, the plan found to be segregatory in 1970 and which made necessary the adoption of the 1970 plan in the first place.

In short, however wise or attractive it may be to adopt a policy of dissolving jurisdiction over school desegregation cases as soon as implementation of a desegregation plan has been completed, such a policy has no place in this case.

B. The District Court Did Not Abuse Its Discretion When It Denied The School District's Motion To Adopt An Alternative School Desegregation Plan Which The Record Establishes Would Be Resegregative In Intent, Design And Effect.

The District Court did not abuse its discretion when it denied the school district's motion to modify its present

desegregation plan by adoption of a combination "neighborhood school, freedom of choice plan" the intent, design and effect of which would be to resegregate Pasadena's school system.

In 1970, Pasadena implemented a plan of its own, not the District Court's, design. That plan resulted in elimination of racially identifiable schools.

In 1974, the new board prepared an alternate plan (J.A. 239-247). The Alternate Plan, if it can be called a plan at all, is a collection of generalized goals containing few specific details. Among the few details given is a proposed division of the district into four zones, of approximately equal ethnic composition. Children in each zone are to be free to choose schools to be attended from among the schools in the zone. Beyond this bare bones outline, the plan contains a few concrete details.

For example, the plan contains no suggestion for dealing with oversubscrip-

tion to a particular school. Based on Pasadena's past history with a similar plan prior to 1970, we may assume that most white parents would choose schools located closest to their homes. If preferences in selections would be given to parents involving schools closest to their homes, the result would be that few, if any, blacks would be given any choice but to attend schools located in black residential areas, all other choices being preempted. The consequences of such a plan are described in J.A. 327. Schools could be expected to range from 3.3% white to 96.1% white, with most whites attending disproportionately white schools and most blacks attending disproportionately black schools (J.A. 327).

The President of the School Board testified that he and the Board expect some such result as a consequence of adoption of the plan. But, he added, that after "Caucasian families" are drawn back into the fold, the board could "begin to apply the kind of incentives that it will be necessary to get them

to move out of their neighborhood school" (J.A. 502).

What incentives? The proposed plan gives absolutely no details. It suggests some possibilities for "unique educational alternatives" to be located at each school site and it also hints at creation or expansion of "District-wide 'magnet schools' . . .to promote integration on a voluntary basis." (J.A. 240-1)

These generalized descriptions, or more accurately wishes, are hardly the stuff of which desegregation plans are made. The burden is on the School Board to "fashion steps which promise realistically" to effect a unitary system. Green v. County School Board 391 U.S. 430, 439 (1968) (emphasis added). Conjecture, fuzzy pipe dreams and lack of detail such as characterize the Board's alternate plan hardly bear a realistic promise to achieve anything but what its proponents plainly intend to achieve--a resegregated school system.

Surely, a school board seeking to modify an existing desegregation plan is under no less a burden of producing realistic details for a proposed plan then is a board first faced with designing a plan. And, as surely, no District Court can be held to have abused its discretion by refusing to approve a plan which is admitted by its designer and proponents to be expected to resegregate schools.

For the thousands of school children in the hundreds of school districts which have by now implemented desegregation plans, no crueler fate could be imagined than encouraging subversion of these plans by permitting modifications to them based on nothing but the frail need of imagination.

Conclusion

For the reasons stated, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-164

PASADENA CITY BOARD OF EDUCATION, ET AL.,
Petitioners,

vs.

NANCY ANNE SPANGLER, ET AL.,
UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF FOR THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP); LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW; and the CENTER FOR NATIONAL POLICY REVIEW ON RACE AND URBAN ISSUES, as *AMICI CURIAE*

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Interest of *Amici* [1]

Amici are nonprofit, charitable organizations which have each strived, since their respective establishment, to end official discrimination against racial, ethnic, and

[1] Letters from counsel for the parties herein, consenting to the filing of this Brief *Amici Curiae* on behalf of the NAACP or the Lawyers' Committee for Civil Rights Under Law, have been filed with the Clerk of this Court pursuant to U.S. Sup. Ct. Rule 42(2).

other minorities. Each has been significantly involved, in the period since this Court's decisions catalyzed the rapid elimination of dual biracial school systems in the South,[2] in efforts to identify and end discriminatory actions of school authorities throughout the Nation which have restricted the educational opportunities of minority group children.[3]

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[2] *Green* v. *County School Bd. of New Kent County*, 391 U.S. 430 (1968); *Monroe* v. *Board of Comm'rs*, 391 U.S. 450 (1968); *Raney* v. *Board of Educ.*, 391 U.S. 443 (1968); *Alexander* v. *Holmes County Bd. of Educ.*, 396 U.S. 19 (1969); *Carter* v. *West Feliciana Parish School Bd.*, 396 U.S. 226 (1969), 396 U.S. 290 (1970); *Northcross* v. *Board of Educ. of Memphis*, 397 U.S. 232 (1970); *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971); *Davis* v. *Board of School Comm'rs of Mobile*, 402 U.S. 33 (1971).

[3] The National Association for the Advancement of Colored People (NAACP) is a nonprofit membership association representing the interests of approximately 500,000 members in 1700 branches throughout the United States. Since 1909, the NAACP has sought through the courts to establish and protect the civil rights of minority citizens. NAACP attorneys have often appeared before this Court, representing the organization as an *amicus* or on behalf of individual litigants in cases involving school desegregation, employment, voting rights, jury selection, capital punishment, and other cases involving fundamental human rights.

The Lawyers' Committee for Civil Rights Under Law was organized on June 21, 1963, following a conference of lawyers called at the White House by the President. The Committee's principal mission is to involve private lawyers throughout the country in the struggle to assure all citizens of their civil rights through the legal process, in particular by affording legal services otherwise unavailable to Black and other minority Americans pursuing claims for equal treatment under law. The Lawyers' Committee is a nonprofit, private corporation whose Board of Trustees includes thirteen past presidents of the American Bar Association, three former Attorneys General, and two former Solicitors General.

The Center for National Policy Review on Race and Urban Issues was established in 1970 as a public interest law center at the Catholic University Law School with the support of private foundations. The Center's principal mission is to provide research assistance and legal representation seeking to vindicate the rights of minority and low income citizens through the federal administrative process. The Center has provided such administrative representation and has also served as counsel or *amicus* in court cases involving equal educational opportunity, housing, mortgage lending discrimination and employment.

The NAACP or its constituent branches have been plaintiffs in a number of school desegregation actions, and the organization has furnished attorneys who represented individual plaintiffs in scores of other cases; NAACP attorneys participated in the proceedings which led to this Court's decision in *Brown* v. *Board of Educ.*, 347 U.S. 483 (1954), 349 U.S. 294 (1955) and *Milliken* v. *Bradley*, 418 U.S. 717 (1974), for example. The Association and its attorneys are currently involved in numerous active school desegregation matters.

The Lawyers' Committee and its staff have a long history of support for, and participation in, school desegregation litigation. For example, the Committee filed a brief and participated in oral argument as *amicus curiae* in *Alexander* v. *Holmes County Bd. of Educ.*, 396 U.S. 19 (1969); through its efforts, volunteer attorneys assisted the plaintiffs in numerous proceedings which resulted from this Court's decision in *Alexander*, *e.g.*, *Gordon* v. *Jefferson Davis Parish School Bd.*, 446 F.2d 266 (5th Cir. 1971). More recently, staff and volunteer attorneys of the Lawyers' Committee have assisted in representing plaintiffs in such cases as *Morgan* v. *Kerrigan*, 509 F.2d 580 (1st Cir. 1974), *cert. denied*, 421 U.S. 963 (1975), and *Brinkman* v. *Gilligan*, 518 F.2d 853 (6th Cir. 1975), *cert. denied*, 44 U.S.L.W. 3331 (Dec. 1, 1975).

The Center and its staff have focused attention on the statutory responsibility of the Department of Health, Education and Welfare to prevent racial discrimination in public school systems of the North and West, publishing an investigative report, *Justice Delayed and Denied: HEW and Northern School Desegregation* (1974) and participating as counsel in the pending case of *Brown* v. *Weinberger*. Among the cases in which the Center has participated as counsel or *amicus* before this Court are *Bradley* v. *School Bd. of Richmond*, 412 U.S. 92 (1973) and *Evans* v. *Buchanan*, 44 U.S.L.W. 3299 (Nov. 17, 1975). The Center has also conducted or sponsored research on issues of educational equality.

Considerable progress has been made—although much remains to be accomplished. Despite the headlines and apprehensions of any particular moment, the number of districts (North and South) which have desegregated their schools, accepted their Constitutional obligation to prevent the reappearance of discrimination, and moved to improve the quality of education for *all* their students

is steadily increasing. Prime among the many factors responsible for this achievement has been this Court's unwavering dedication to the effectuation of *Brown* within school districts which have been found to have discriminated against racial or ethnic minorities in the past,[4] and the courageous, meticulous attention given school desegregation cases by many United States District Judges. In turn, the consistency of the legal process has fortified the resolve of school boards and other local agencies which have moved voluntarily to end official discrimination and to eliminate its vestiges.[5]

With this appreciation for the critical importance of this Court's pronouncements, *amici* were naturally concerned when the Court agreed to review the affirmance of a district court decree requiring school authorities (in a case involving intentional creation of segregated schools) to maintain a desegregated school system for a fourth school year after the finding of violation and issuance of a remedial decree.[6] Subsequent review of the rec-

[4] *E.g., Cooper* v. *Aaron*, 358 U.S. 1 (1958) (official intransigence and interposition); *Griffin* v. *County School Bd.*, 377 U.S. 218 (1964) (evasion by closing schools); *Monroe* v. *Board of Comm'rs, supra*, 391 U.S., at 459 (threatened "white flight"); *Alexander* and *Carter, supra* (delay); *Wright* v. *Council of the City of Emporia*, 407 U.S. 451 (1972); *United States* v. *Scotland Neck City Bd. of Educ.*, 407 U.S. 484 (1972) (creation of "splinter districts"); *Keyes* v. *School Dist. No. 1, Denver*, 413 U.S. 189 (1973) (claims that unconstitutional actions affected only portion of school district).

[5] *See, e.g., Balsbaugh* v. *Rowland*, 447 Pa. 157, 290 A.2d 85 (1972); *State ex rel. Citizens Against Mandatory Busing* v. *Brooks*, 80 Wash. 2d 121, 492 P.2d 536 (1972); *Citizens Against Mandatory Busing* v. *Palmason*, 80 Wash. 2d 445, 495 P.2d 657 (1972); *cf. McDaniel* v. *Barresi*, 402 U.S. 39 (1971).

[6] This is only the second school board petition for certiorari in a desegregation case which has been granted since *Brown*; in the previous instance, the Court declined to endorse the lower courts' requirement of an inter-district remedy, but remanded the case with instructions to provide a within-district remedy for the dual school system which had been proved. *Milliken* v. *Bradley, supra*, 418 U.S., at 752-53.

ord has convinced *amici* that the limited judgment of the Court of Appeals was appropriate in the circumstances of this case. For that reason, a reversal of that judgment may be interpreted by segments of the public, and of the federal judiciary, as a dilution of the substantive content of the Fourteenth Amendment as it affects racial segregation in education. It is with the hope of preventing any such result that *amici* submit this Brief.

Statement

In our view, Petitioners' Statement of the case distorts the record and judgment below in two respects critical to the disposition of this case: First, the district court's original judgment of violation six years ago was predicated on a showing of intentional segregation, not mere racial imbalance as Petitioners contend (Pet. Br., pp. 3-4). Second, the 1975 judgment of the Court of Appeals (the precise judgment now under review) expressly disapproves, and does not sanction (as Petitioners assert, Pet. Br., p. 9), the imposition of a particular racial quota for the foreseeable future.

1. *The 1970 Violation Judgment.* Although Petitioners have obtained review of an order in a school desegregation case which is clearly *remedial* in nature (to wit, one which denies their request to alter a previously approved desegregation plan), they have sought to create an atmosphere unfavorable to the district court's action by making pejorative comments about the district court's original, almost six-year-old judgment that the Constitution had been violated by Pasadena school authorities. It is therefore important that the nature of the district court's 1970 holding on liability be properly portrayed.

Petitioners charge that in the proceedings on liability, the "trial court operated on the invalid assumption that

racial imbalance and segregation were one and the same . . . . The failure of the Pasadena School Board to correct this racial imbalance *was the primary basis on which the system was found to be a dual system* and, therefore, constitutionally defective." (Pet. Br., p. 3) (emphasis supplied). In support of this assertion, Petitioners quote only three of 54 factual findings entered by the district court in support of its judgment (Pet. Br., pp. 3-4.) A review of the entire detailed, and unchallenged, factual findings of the district court demonstrates a consistent, intentional, discriminatory course of conduct by Pasadena school authorities over several decades in all areas of school administration.[7]

It is clear, in this context, that the district court did not confuse the descriptive phenomenon of "segregation-imbalance" with the legally significant factor of *intentional official action*[8] resulting in that segregation.[9] The

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[7] Included in these intentional policies were: (1) busing white students past Black schools to other white schools, 311 F. Supp., at 507; A. 100-01; (2) making, or refusing to make, attendance boundary changes with the end result of increasing racial predominance in both Black and white schools, 311 F. Supp., at 507-10; A. 100-05; (3) locating new schools and constructing additions to existing facilities so as to maximize segregation, 311 F. Supp., at 517-19; A. 119-23; (4) grouping students within schools so as to segregate individual classes according to race, 311 F. Supp., at 519-20; A. 123-25; (5) granting racially motivated transfer requests which exacerbated segregation, 311 F. Supp., at 520; A. 125-26; (6) discriminating in the hiring of faculty, staff and administrators, 311 F. Supp., at 515-16; A. 115-18; and (7) racially allocating faculty, staff and administrators in a manner which further identified schools as "Black" or "white," 311 F. Supp., at 513-15; A. 112-15.

[8] *Keyes* v. *School Dist. No. 1, Denver, supra,* 413 U.S., at 208.

[9] The distinction is consistently reflected in this Court's opinions. *Cf. Keyes, supra,* 413 U.S., at 232 (Powell J., concerning in part and dissenting in part): "The issue in these cases will not be whether segregated education exists. This will be conceded in most

district court did not proceed from a finding of "segregation-imbalance" to the conclusion that Petitioners were Constitutionally obligated to integrate their schools. Such a holding could have come without the necessity of a trial, since the enrollment and faculty assignment figures were undisputed. Instead, the court's findings specify in great detail how the activities of Pasadena school officials, from 1934 to the date of trial, had created, maintained, and exacerbated segregation in the district's schools.[10]

Given these amply supported findings, it is simply not accurate to say that the district court's "findings of violations were based not so much on affirmative acts of

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of them." Were the existence of "segregation" sufficient to demonstrate an unconstitutional practice, this Court would not have carefully distinguished in *Swann* and *Keyes* between *de jure* and "so-called *de facto*" segregation. *See* 402 U.S., at 17-18; 413 U.S., at 208. And while these terms may be more descriptive of legal attributes rather than objective conduct, *see* 413 U.S., at 232-36 (Powell, J.), the fact remains that they are distinguished in practice by the existence of evidence from which intentional official action resulting in the segregation can be inferred. *Id.*, at 208 (Opinion of the Court).

[10] The subheadings of the district court's findings are instructive in this regard: "III. Segregation of Students . . . A. The Fact of Racial Segregation . . . B. Defendant's Actions and Inactions that Have Contributed to and Intensified Racial Separation . . . ." *Cf. Kelly* v. *Guinn,* 456 F.2d 100, 106 n. 6 (9th Cir. 1972), *cert. denied,* 413 U.S. 919 (1973): "Whatever the district court may have meant by its occasional references to 'de facto segregation' in the Clark County School District, it is clear from the language of the district court quoted in the text that the court did *not* define the term, as the Supreme Court did in *Swann,* as referring to a situation 'where racial imbalance exists in the schools *but with no showing that this was brought about by discriminatory action of state authorities*'" (emphasis in original). The point is that the particular language used to describe either the fact of segregation or its unconstitutional cause should not obscure the substance of findings of intentional misconduct. *Cf. Brinkman* v. *Gilligan, supra,* 518 F.2d, at 854. Indeed, the substance of even the "inaction" findings is that Pasadena school authorities purposefully resolved to maintain segregation. *Id.* at 510-11; A. 105-09. *Compare Keyes, supra; Milliken* v. *Bradley, supra.*

segregation by Petitioners, as on their failure to act to prevent 'racial imbalance.'" Petition for Writ of Certiorari, at p. 3. In sum, this Court's consideration of the remedial actions of the district court should be undertaken free of any residual suspicions about the findings of a Constitutional violation in Pasadena which Petitioners have endeavored to create.

2. *The Court of Appeals' Ruling.* Similarly, the suggestion (Pet. Br., pp. 8-9) that the judgment of the court below authorizes the imposition of a particular racial quota for the foreseeable future misconceives the true facts. To understand this mischaracterization of the judgment below, a cursory review of the prior proceedings is required.

As noted, in 1970, the district court found that Petitioners or their precedessors had, through deliberate, official, discriminatory actions, created and maintained a dual school system in Pasadena. The court accordingly required submission of an affirmative remedial plan which would, among other things, alter pupil assignments so that no school would be racially identifiable: in the particular context of Pasadena, the court directed that no school should draw a majority of its 1970-71 enrollment from any one minority group.[11] Such a plan was

[11] *Compare, e.g., Keyes, supra,* 413 U.S., at 195-98. Pasadena enrolls students of three minority groups which have historically been discriminated against in California: Blacks, Chicanos—*see, e.g., Westminister School Dist.* v. *Mendez,* 161 F.2d 744 (9th Cir. 1947); *Soria* v. *Oxnard School Dist.,* 386 F. Supp. 539 (C.D. Cal. 1974)—and Chinese—*see, e.g., Lee* v. *Johnson,* 404 U.S. 1215 (1971) (Douglas, J., in Chambers). (A. 440.) However, the district court's order of March 10, 1970 approved Petitioners' plan which contemplated school populations more than 50% combined minority, such as Arroyo-Garfield. (A. 92, 96.) In 1970, the Pasadena school district's enrollment was 33% Black, 10% Chicano, and 3% Asian (A. 440). Thus, the "no majority of any minority" guideline contemplated greater racial and ethnic variation in enrollments than in *Swann* (9% Black to 38% Black) and countless other cases. *See* pp. 15-16 *infra.*

prepared by the school system staff and approved by the district court. In its initial year of implementation, it met the court's guidelines with respect to school enrollments.

However, in the three succeeding years, the plan did not achieve these results. An increasing number of schools were distinguishable by increasingly large Black enrollments. Petitioners did not alter their plan in the face of these developments nor otherwise advise the district court of any change in circumstances, despite its continuing jurisdiction.[12] Instead, in 1974, Petitioners finally filed a four-part motion (A. 232) asking for modification of the court's 1970 orders by (1) withdrawing the injunction requiring them to implement the desegregation plan approved by the district court in 1970; (2) withdrawing the injunction insofar as it required that the plan avoid school enrollments which were "majority-minority"; (3) permitting them to implement a new pupil assignment plan attached to the motion; and (4) dismissing the case. Certain "changed circumstances" and exigencies were claimed by Petitioners to justify the relief which they sought: the decline in the system-wide proportion of white students, from 58% to 44%, Petitioners claimed, made avoidance of "majority-minority" schools infeasible; the K-3, 4-6 elementary school organizational pattern embodied in the Pasadena Plan,

[12] To the contrary, Petitioners' *post hoc* litigation contention is that implementation of the 1970 pupil assignments operated *instanter* to fulfill their responsibility: "[the] Pasadena Plan . . . extirpated all remnants of school segregation immediately." Pet. Br., p. 4. Their 1974 motion for modification contended both that they had "complied with the mandate of this Court relating to a unitary school district" and that demographic changes had "made it a practical impossibility to continue to comply with the portion of the judgment of this Court which required that there be no school in the district 'having a majority of any minority students.'" (A. 233, 237.) The district court found compliance was feasible, and that the vestiges of discrimination had not been eliminated.

they said, prevented desirable educational modifications offering parents a choice of instructional techniques and curricular emphases for their children. In addition, Petitioners averred that modification of the 1970 decree was justified because the decree had caused the drop in white enrollment in the district (and was, thus, an unsatisfactory mechanism for discharging Petitioners' affirmative duties); and that, far from contributing to the achievement of equal educational opportunities, the Pasadena Plan had resulted in lower educational attainment by both Black and white students.

Following a hearing, the district court denied the Petitioners' alternative motions. *Spangler* v. *Pasadena City Bd. of Educ.*, 375 F. Supp. 1304 (C.D. Cal. 1974); A. 452. The court ruled that it had intended its 1970 decree to require that Petitioners prevent (unless it were not feasible) the recurrence of school enrollments in which minority-race students constituted a majority;[13] that reassignments to achieve this end were still feasible; that implementation of the 1970 decree had caused neither unusual loss of white students (compared to other California districts) nor deterioration in academic achievement; and that Petitioners' alternative plan, which was based on "free choice" assignments, was intended to and likely would result in the immediate reestablishment

[13] In a remark at the hearing, the district court made the following statement concerning the plan submitted by the school board pursuant to the 1970 order: "Now, what that meant to me that at least during my lifetime there would be no majority of any minority in Pasadena." (A. 220.) Whether this remark is read as an offhand release of tension by a district judge vexed by what he perceived as a recalcitrant school board disavowing its own proposal to make readjustments (*see* A. 10), or as a verbal gloss otherwise omitted from the district court's final written order, the remark was specifically removed from the judgment now under review; for the Court of Appeals' majority specifically rejected any notion that annual reassignments or an immutably fixed racial percentage could be imposed. See discussion *infra*, pp. 13-18.

of a racially segregated school system, and was therefore a Constitutionally unacceptable remedial measure.

The Court of Appeals affirmed, but with important clarifications. *Spangler* v. *Pasadena City Bd. of Educ.*, 519 F.2d 430 (9th Cir. 1975); Petition for Writ of Certiorari, at p. A1.[14] Contrary to Petitioners' suggestion (Pet. Br., p. 14), the two judges in the majority below, in their separate opinions, both agreed that the district court could not require "annual" or other adjustments to maintain schools without a majority of enrollment composed of minority-race students *after* a plan had worked for a sufficient period of time to justify the conclusion that a unitary system had been established. 519 F.2d, at 438, 440.[15] Thus, the propriety of requiring annual reassignments to

[14] The peculiar procedural posture of the case prevented modification or reversal in part. The district court's 1970 decree required submission and implementation of a pupil assignment plan sufficient that "by or before the beginning of the school year that commences in September of 1970, there shall be no school in the District, elementary or junior high school, or senior high school, with a majority of any minority students." 311 F. Supp., at 505; A. 3-4. A subsequent district court judgment (A. 96) approved the particular plan submitted by Pasadena—a plan in which the school board itself proposed annual adjustments (A. 10). The language of the decree does not explicitly require continual reassignments; indeed, Petitioners argue here that not until the 1974 hearings did they understand the decree in this fashion (Pt. Br., pp. 6-7). The quoted provision of the decree, as written, thus established a remedial standard based upon both feasibility and system-wide racial composition (*see infra*, pp. 13-18); only with whatever additional gloss the district court's verbal remark almost four years later placed upon it, *see* note 13 *supra*, could the decree have been understood to require continued annual reassignments throughout the district judge's lifetime. The Court of Appeals properly tailored its opinion to disapprove only the unwritten subsequent gloss on the actual words of the decree (Judge Chambers commented that "the message is clear to the district court," 519 F.2d, at 440). There was thus no occasion to vacate or modify the decree itself.

[15] Judge Wallace's dissenting opinion did not suggest that Petitioners were unquestionably entitled to the relief they seek in this Court. Rather, it suggested a remand for further proceedings. In Judge Wallace's view, the judgment "whether 'the affirmative duty

preserve a particular racial balance is simply not before this Court on review of the judgment or opinion below, whatever one might reasonably have read into the oral remark of the district court concerning its original order.

Summary of Argument

I

Neither the district court's original judgment on remedy in this case, nor its 1974 denial of the relief sought by Petitioners, may properly be construed as requiring "racial balance" or quotas. The decrees were based upon the trial court's accurate assessment of the facts and circumstances about the *de jure* segregated Pasadena school system which were pertinent to the fashioning of a feasible remedy that achieved "the greatest possible degree of actual desegregation," *Swann* v. *Charlotte-Mecklenburg Bd. of Educ., supra.*

II

Petitioners failed in the trial court to present evidence which would justify either termination of this lawsuit or modification of the original remedial decree. Sound

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to desegregate had been accomplished and racial discrimination through official action is eliminated from the system" requires a district court to determine, whenever modification of a school desegregation plan is sought, "whether the segregation foreseeable upon dissolution of the injunction is attributable to intentionally segregative actions of the school district." 519 F.2d, at 444. As Judge Wallace's opinion intimates, this result would transform every modification hearing into a search for a new constitutional violation. 519 F.2d, at 445-46, text at notes 9 and 10. *Compare Morgan* v. *Kerrigan*, No. 75-1184 (1st Cir. January 14, 1976), slip op. at pp. 23-28. But this Court has made clear that district courts' continuing remedial jurisdiction does not depend upon a showing of independent violations. *Wright* v. *Council of the City of Emporia, supra; United States* v. *Scotland Neck City Bd. of Educ., supra; Raney* v. *Board of Educ., supra.*

principles of equity jurisdiction, as well as the Constitutional principles respecting school desegregation which have been enunciated by this Court, support and would require the district court to maintain its supervision of this case. In particular, the court acted properly in refusing to permit the adoption of a pupil assignment plan whose foreseeable result was a return to segregation.

III

The judgment below should be upheld in order to avoid encouraging the invention of new schemes to frustrate the mandates of the Fourteenth Amendment.

ARGUMENT

I

The Remedial Standards Embodied In The District Court's 1970 Order Are Proper Under *Swann* And The Fourteenth Amendment.

Petitioners insist that this Court is "obliged to reverse" the judgment below, either because the district court's order was "invalid *ab initio*" in 1970, or because its denial of Petitioners' motion to modify the order was similarly void. (Pet. Br., pp. 13, 14.) The basis for these conclusions is Petitioners' contention that the 1970 order mandates a "rigid racial balance" in Pasadena's schools which is proscribed by this Court's decision in *Swann* v. *Charlotte-Mecklenburg Bd. of Educ., supra.* But, as an understanding of the actual rulings below shows (*see* Statement, *supra*), the case cannot be dealt with so simply. Petitioners' arguments would exalt semantic form over Constitutional substance.

The 1970 decree contained, on its face, a limitation as to the sort of pupil assignment plan which the district court considered acceptable to meet Petitioners' Constitutional obligations:

> The plan shall include procedures to be followed and goals to be attained in connection with the location and construction of facilities, both permanent and transportable, that will reduce racial segregation in the District. The plan shall provide for student assignments in such a manner that, by or before the beginning of the school year that commences in September of 1970 there shall be no school in the District, elementary or junior high school or senior high school, with a majority of any minority students.

311 F. Supp., at 505; A. 3-4. This language was not a directive requiring racial balance.

The true nature of the order was aptly characterized by the United States in its Brief *Amicus Curiae* in *Swann*. There the government cited the present case with approval, in the course of a discussion which argued that Judge McMillian's orders in the *Swann* case did in fact go too far in the direction of racial balance:[16]

> [T]he standard of no predominantly Negro schools has been used as a means of translating into remedial terms a finding, in view of available alternatives, of the extent to which racial concentration could feasibly be eliminated.[17] See, *e.g.*, *Spangler and United States* v. *Pasadena City Board of Education*, unreported order entered on findings and conclusions reported at 311 F. Supp. 501 (C.D. Calif.). Such an articulation of remedial obligations cannot be read in the unyielding [racial balance] terms suggested by the plaintiffs-petitioners. . . . Insofar as such remedial expressions are made on the basis of a record and findings on "the availability to the board of other more promising courses

[16] This Court disagreed with the government's characterization of the *Swann* orders. *See* text *infra*, at note 19.

[17] In this case, the district court had heard testimony concerning viable desegregation measures before it fashioned its remedial decree. *See* 311 F. Supp., at 513 ¶ 28; A. 111.

> of action," 391 U.S. 439, they represent no departure in constitutional principle from *Green*, which directed district courts to assess proposed plans "in light of any alternatives which may be shown as feasible and more promising in their effectiveness." *Ibid.*

(Brief for the United States as *Amicus Curiae*, *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, O.T. 1970, No. 281, at pp. 21-22). A district court order embodying a similar limitation upon desegregation plans in a school system in which no minority race constituted 50% of the district's pupil enrollment was approved in *Kelly* v. *Guinn*, *supra*, 456 F.2d, at 110: "The 50 per cent figure is a ceiling for black enrollment imposed for the purpose of compelling a real beginning toward eliminating the effects of past segregative practices." [18]

The 1970 decree in this case also compares favorably with *Swann* in the flexibility it accorded the school board. At the time the remedial decree was fashioned, each school system was about 30% Black (although Pasadena had a larger proportion of Chicano and Asian students than Charlotte). (*See* 402 U.S., at 6; A. 440.) Judge McMillan directed in the Charlotte case that "efforts should be made to reach a 71-29 ratio in the various schools. . . ." 402 U.S., at 10 n. 4. The plan drawn by the court's consultant pursuant to these directions resulted in school racial compositions varying from 9% to 38% Black, *id.*, at 9—or from 20 percentage points below the system-wide average to 9 points above it. This

[18] In school districts of different racial composition, the "starting point," *Swann*, *supra*, 402 U.S., at 25, is of course different, and a 50% limitation would be inappropriate. *Cf. Wright* v. *Council of the City of Emporia*, *supra*; *United States* v. *Scotland Neck City Bd. of Educ.*, *supra*. The opinions of the courts below do not suggest otherwise.

Court held there had been no deviation from acceptable remedial principles.[19]

In contrast, the 1970 decree in the Pasadena case permitted variations in racial composition from 0% Black to 50% Black—or from 30 percentage points below the system-wide ratio to almost 20 percentage points above it.[20] The real reason that the "Pasadena Plan" resulted in enrollments with a far smaller variance (*e.g.*, A. 439-47) was the school board's choice, in fashioning a plan to meet the court's guideline, to preserve "neighborhood elementary schools" for all pupils through a combination of grade restructuring, pairing, and satellite zoning (A. 9).[21]

Recalling again the fact that the district court in this case had heard testimony about feasible desegregation plans for the school district, and the description of the order as a shorthand "finding, in view of available alternatives, of the extent to which racial concentration could feasibly be eliminated," we see that no particular degree of racial balance was mandated therein. Rather, the order was akin to those entered by ap-

[19] "Awareness of the racial composition of the whole school system is likely to be a useful starting point in shaping a remedy to correct past constitutional violations. In sum, the very limited use made of mathematical ratios was within the equitable remedial discretion of the District Court." 402 U.S., at 25.

[20] *Cf. Kelly* v. *Guinn, supra,* 456 F.2d, at 110: "The court did not impose a fixed racial ratio upon classes in the school system—some classes might have 45 per cent black students, some 15 per cent, some none."

[21] The dissenting judge in the Court of Appeals did not find the 1970 decree to establish impermissible racial quotas, but rather the district court's 1974 interpretation of the decree: "So interpreted, the injunction transforms racial balance from a means of remedying de jure segregation into an end in itself, precisely contrary to the principles expressed by the Supreme Court." 519 F.2d, at 443. This interpretation of the decree was also expressly disapproved by the majority. See text at note 15, *supra.*

pellate courts in school desegregation cases, affording school boards another opportunity to submit Constitutionally acceptable plans but requiring that district courts approve those plans only if they achieve *at least as much* desegregation as promised by plans of record, since

> [t]he district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation. . . . [*Swann, supra,* 402 U.S., at 26]

E.g., Pate v. *Dade County School Bd.,* 434 F.2d 1151 (5th Cir. 1970); *Ross* v. *Eckels,* 434 F.2d 1140 (5th Cir. 1970); *cf. Adams* v. *School Dist. No. 5,* 444 F.2d 99 (4th Cir. 1971). Contrary to Petitioners' assertion (Pet. Br., p. 12), therefore, the 1970 decree of the district court did not constitute a mandate for "racial balance."

The same is true of the district court's 1974 action declining to modify the decree. As in 1970, the Court's decision represented a judgment about the feasibility of compliance with the decree[22] and the necessity for an explicit remedial standard to guide Petitioners' actions.[23]

Just as the district court did not require an arbitrary racial balance in fashioning its 1970 decree, neither did it do so when it left that decree intact in 1974; significantly, the court was not presented with a choice between alternative formulations each of which would insure nondiscriminatory operation of the Pasadena schools. The choice was between the court's original decree and a plan which, as we argue below, the court properly found would result in the reestablishment of

[22] 375 F. Supp., at 1307, n. 11; A. 456.

[23] 375 F. Supp., at 1309; A. 459. ("Modification would . . . leave the Board to its own devices. . . .")

racially identifiable schools.[24] The district court's rejection of this proferred resegregation alternative no more demonstrates a commitment to "rigid racial balance" than do court decisions requiring that substantially disproportionate, racially identifiable schools must be desegregated to eliminate the dual system. *See, e.g., Medley* v. *School Bd. of Danville*, 482 F.2d 1061, 1062 (4th Cir. 1973), *cert. denied*, 414 U.S. 1172 (1974); *Wheeler* v. *Durham County Bd. of Educ.*, 521 F.2d 1136, 1140 (4th Cir. 1975); *Acree* v. *County Bd. of Educ.*, 458 F.2d 486 (5th Cir.), *cert. denied*, 409 U.S. 1006 (1972); *cf. Drummond* v. *Acree*, 409 U.S. 1228 (1972) (Powell, J.). The judgment below is not improper on this ground.

II

The District Court Properly Maintained Its Remedial Jurisdiction Over Petitioners To Insure Constitutional Compliance.

A. *The Court Correctly Treated Petitioners' 1974 Motion In Accordance With Traditional Equitable Principles Governing The Modification Of Injunctions.*

As this Court said in *Swann*, "a school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right." 402 U.S., at 15-16. *See also, Millken* v. *Bradley, supra*, 418 U.S., at 753 (Stewart, J., concurring). It was entirely appropriate, therefore, for the district court to weigh Petitioners' 1974 motions in light of traditional principles of equity jurisprudence. That court had "wide discretion" in considering Petitioners' motion to modify. *System Federation No. 91* v. *Wright*, 364 U.S. 642, 648 (1961). Since the object of its decree was not "merely "so far as possible [to] eliminate the discriminatory effects of the

[24] *See* pp. 21-22 *infra*.

past" but also to "bar like discrimination in the future," *Louisiana* v. *United States*, 380 U.S. 145, 154 (1965), the district court properly inquired whether conditions had so changed as to remove the basis upon which its original decree was entered, *United States* v. *Swift & Co.*, 286 U.S. 106 (1932), and also whether "there exist[ed] some cognizable danger of recurrent violation" if its injunction were lifted, *United States* v. *W. T. Grant Co.*, 345 U.S. 629, 633 (1953).[25] On both counts its decision was manifestly correct, properly affirmed below, and should not be overturned by this Court.

First, the district court held that Petitioners had made no showing of changed conditions sufficient to justify either dismissal of the case or modification of the injunction. The Court of Appeals agreed, 519 F.2d, at 434-35, and we do not read Petitioners' Brief to contest these rulings.[26] Second, the trial court also held that

[25] 375 F. Supp., at 1306, 1309; A. 454, 459.

[26] The Petitioners' motion said that "[d]ue to changing circumstances within the City of Pasadena, the Board is obliged to seek modification" (A. 233), and Board President Marcheschi averred that it was "a practical impossibility to continue to comply" with the order (A. 237). The trial court rejected these contentions of infeasibility, 375 F. Supp., at 1307 n. 11; A. 456, and Petitioners have argued to this Court only that compliance "would necessarily require even a higher rate of forced busing" (Pet. Br., p. 12). There is absolutely no showing, however, that in this small district such busing would "either risk the health of the children or significantly impinge on the educational process," *Swann, supra*, 402 U.S., at 30-31. Indeed, there is no record evidence of the extent of such increase, if any.

Petitioners also sought modification on the ground that *future* changes would make the Pasadena Plan unworkable. The Superintendent's affidavit noted the pattern of increasingly large Black student enrollments at a growing number of schools, and continued:

> *If the present trend is allowed to continue*, within the framework of the existing Plan, it will become a practical impossibility to comply. . . . [A. 236 (emphasis supplied)]

But it is settled that predictions of "white flight" will not excuse a school board from performance of its Constitutional obligations.

granting Petitioners' motion would "in effect, leave the Board to its own devices" and, in the context of this case, invite the instant reestablishment of racially identifiable schools in Pasadena, 375 F. Supp., at 1307, 1309; A. 455, 459. These findings also were affirmed by the Court of Appeals, 519 F. 2d., at 434-35.[27] It is not entirely clear whether Petitioners challenge this judgment here, because their arguments on the subject are entwined with their contention that a "unitary system" was created in Pasadena when the 1970 decree was first implemented, which deprived the district court of jurisdiction to continue that decree in effect. In any event, the findings are amply supported on the record:

1. *The Alternative Plan.* If the district court had retained jurisdiction but granted Petitioners' motion to

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E.g., Monroe v. *Board of Comm'rs, supra; United States* v. *Scotland Neck City Bd. of Educ., supra; Morgan* v. *Kerrigan, supra,* slip op. at pp. 29-30. And, although Petitioners also attempted to rationalize their request by demonstrating that the original decree had become "an instrument of wrong," *Lubben* v. *Selective Service System Board No. 27,* 453 F.2d 645, 651 (2d Cir. 1972), because it prompted "white flight" and lowered educational achievement, this effort, too, failed. The record contains specific contrary evidence (*e.g.*, A. 341-46, 356-75, 386-94, 530-66); the district court credited that evidence (375 F. Supp., at 1306, 1308; A. 454, 458); the Court of Appeals upheld the trial judge's findings (519 F.2d, at 435-36) without stated disagreement by the dissenting judge; and Petitioners have apparently forsaken these claims here.

[27] Judge Wallace, dissenting, did not disagree with the prediction that the alternative plan favored by Petitioners would result in resegregation. He would have remanded in order that the district court determine "whether the segregation *foreseeable upon dissolution of the injunction* is attributable to intentionally segregative actions of the school district." 519 F.2d, at 444 (emphasis supplied). As we have previously stated, n. 15 *supra,* this approach confuses the liability and remedy stages of a case. See *Kelly* v. *Guinn, supra,* 456 F.2d, at 109-10; *cf. Wright* v. *Emporia, supra.* In addition, we submit that it is far more likely to lead to prolonged, complex, and ultimately futile litigation in these cases than the standards applied by the majority below. *See Morgan* v. *Kerrigan, supra,* slip op. at pp. 23-28.

implement the "Integrated Zone/Educational Alternatives Plan" (A. 239-45), it would be leaving the racial composition of Pasadena's elementary school student bodies to the individual choices of the district's parents. The plan itself admitted that "the ethnic balance at some sites may be altered" from that effectuated by the 1970 decree. Indeed, it made provision for "half-day-a-week pairing" of substantially disproportionate schools (A. 241). The evidence at the hearing indicated the marked changes which could be expected to occur. These were summarized with considerable understatement in the district court's opinion as resulting in eight schools "over 60 per cent black [in] enrollment," [28] leading Petitioners to charge that the district court's only objection to their proposal was that it "would not maintain the racial balance quotas that the trial court had established through the original plan." (Pet. Br., at p. 21.)

Although there were no projections of expected enrollments under the plan (A. 485-85, 492), as drafted it gave priority to students living within the "neighborhood" of a school (A. 479).[29] And if choices followed "neighborhoods," the evidence indicated that many elementary schools would be more than 75% and 85% Black, and others less than 5% Black (A. 329).[30] In sum, the Pasadena schools would mirror their pre-1970

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[28] 375 F. Supp., at 1307 n. 9; A. 455. All these schools were racially identifiable Black schools prior to the entry of the 1970 decree. *See* A. 141-45.

[29] As explained by the Board President, the alternative plan also gave "equal" priority "to children whose race is in the minority in that particular school" (A. 479). However, there was no mechanism for choosing among these competing, equal priorities (A. 487), and it is undisputed that in Pasadena, as elsewhere, white students have never voluntarily enrolled in significant numbers in formerly Black facilities (*see* A. 167-72, 193-200, 217-31).

[30] *Cf.* A. 510-11 (summer program "free choice" enrollments).

condition (A. 141-45).[31] The Board President very frankly told the district court:

> Your Honor, if I may, I agree with the court that if it had been the intent of the board or I as the primary conceiver of the modified plan to come before the court and allege with certainty that the modified plan would result in a school district with no schools having a majority of a minority race or a school district *in which there might not be any racially identifiable schools*, your Honor, I agree with you that we would be asking you to buy a pig in a poke. At the risk of being presumptuous, I consider myself to be too good a salesman to come before the court and attempt to persuade it from that poor position.

(A. 503) (emphasis supplied.)

2. *Relinquishing jurisdiction.* The district court correctly foresaw even more serious consequences if it were to relinquish jurisdiction. At the least, the court could anticipate the immediate implementation of the plan attached to Petitioners' motion, which it had concluded would not satisfy the Board's Constitutional obligations. Furthermore, it was reasonable for the court to assume that a more rigid application of "neighborhood" zoning might be instituted. The majority of the present membership of the Board of Education had campaigned on promises to "return to neighborhood

[31] As a unanimous First Circuit recently said in affirming a district court's rejection of a similar "desegregation" plan submitted by the Boston School Committee,

> . . . we must agree with the district court that schools offering programmatic alternatives, while a useful supplement to an otherwise adequate desegregation plan, could not realistically sustain the burden of achieving desegregation of the Boston city schools.

Morgan v. *Kerrigan*, No. 75-1184 (1st Cir., January 14, 1976), slip op. at pp. 11-12.

schools" and "end forced busing" (*e.g.*, A. 285), and was anxious to make good on these commitments (*see, e.g.*, A. 502).[32]

The court had earlier found that previous school boards' discriminatory adherence to their conceptions of "neighborhood schools" and "free choice" transfers were factors in the maintenance and aggravation of Pasadena's school segregation.[33] *Cf. Swann, supra*, 402 U.S. at 21; *Green, supra.* Moreover, there was also evidence of violations of the 1970 decree in the selection and appointment of principals and other administrative staff (*see* A. 264-65, 317-21, 514-18, 606-07; *cf.* A. 268). Although the district court made no direct reference to this evidence in its opinion or order denying the Petitioners' 1974 motions, in a subsequent proceeding (now before the Court of Appeals for review[34]) the district court ruled that Petitioners had violated the order and thus failed to carry out their affirmative Constitutional duty to overcome the prior deliberate faculty and ad-

[32] Contrary to Petitioners' arguments, the denial of the motion to modify or dissolve the 1970 decree hardly means that "Judge Real wants the board also to abstain from speaking out against forced busing and holds that its failure to do so amounts to continuing segregation" (Pet. Br., p. 19). No injunction restricting the Board members' expression of their views has been entered. The Board members have, quite properly, been enjoined from acting upon their views in a manner which would perpetuate or reinstitute the unconstitutional dual school system which existed in Pasadena prior to the court's 1970 decree. And the district court correctly took the school board members' views into account in estimating the "cognizable danger of recurrent violations," *United States* v. *W. T. Grant Co., supra*, if it relinquished its jurisdiction. The sole Black member of the board stated in an affidavit "that it is the intention and design of the majority of the Board to have a negative impact upon integration in the Pasadena Unified School District and that it is their ultimate intention to seek a return to segregated schools in this school district" (A. 267).

[33] 311 F. Supp., at 504, 521; A. 98, 127.

[34] 9th Cir. No. 74-2530.

ministrative segregation in the district.[35] The court could properly consider this evidence as well in making its determination as to the appropriateness of continuing jurisdiction.

Thus, unless school desegregation cases are markedly unlike other suits in equity, there was abundant justification for the district court's denial, in this instance, of Petitioners' 1974 motions. While phrases such as "end-[ing] . . . judicial control of the Pasadena educational system," and "reliev[ing Petitioners] of the trial court's yoke" beg attention, in view of the strong tradition of "local control over the operation of schools," *Milliken* v. *Bradley*, *supra*, 418 U.S., at 741, these words have little application to the choice presented the district court in this case: between retaining jurisdiction or permitting the reinstatement of segregation.

B. *Petitioners Did Not Establish "Unitary Status."*

In *Swann*, *supra*, 402 U.S., at 31, this court said:

> At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in *Brown I*. The systems will then be "unitary" in the sense required by our decisions in *Green* and *Alexander*. [emphasis supplied]

Petitioners extract from this language the propositions that their school system became "unitary" the moment the 1970 decree of the district court was implemented, and that the trial court thereby was deprived of any further jurisdiction in the case. *See* Pet. Br., pp. 14-15. This thesis is unsupported and unpersuasive.

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[35] "Thus, under the guise of making 'temporary' administrative appointments of a continuing nature, the Board could 'permanently' frustrate the aims of the Plan relating to the hiring of minority administrators. Constitutionally, this court cannot and will not abide the transparency of such an action." *Spangler* v. *Pasadena City Bd. of Educ.*, Civ. No. 68-1438-R (C.D. Cal., August 12, 1974), at p. 6.

1. *Initial implementation of the 1970 decree did not convert Pasadena into a unitary system.* There is no question that, as to pupil assignments, the plan approved in 1970 promised—if successfully implemented and maintained for a period of time sufficient to eliminate the continuing effects of the prior discrimination—to effect a unitary school system in Pasadena. Petitioners err, however, in their contention that because the new assignments were instituted "in one fell swoop," their system immediately became unitary.[36] (*See* Pet. Br., p. 14.) For it is settled that desegregation plans satisfy the Constitution only when they work in practice, and not merely in theory. *Green* v. *County School Bd. of New Kent County*, *supra*. Indeed, this Court's instruction that district courts "should retain jurisdiction in school segregation cases to insure . . . that the goal of a desegregated, non-racially operated school system is rapidly and finally achieved," *Raney* v. *Board of Educ.*, *supra*, 491 U.S., at 449, and the language from *Swann* quoted above, both clearly indicate that conversion to a unitary system can be judged only over time. This has been the consistent holding of the federal courts which have decided the issue.

For example, desegregation decrees which at first appeared satisfactory have been reopened and altered when projected results have not materialized over time. *E.g.*, *Hereford* v. *Huntsville Bd. of Educ.*, 504 F.2d 857, 858 (5th Cir. 1974), *cert. denied*, 421 U.S. 913 (1975):

> We view this case as presenting no more than a motion in the district court for further relief in a typical school desegregation case where modification is indicated because of lack of success.

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[36] Petitioners also err in their assumption that Pasadena's implementation schedule was unique. Rather, complete desegregation has been the standard since this Court's decisions in *Alexander* v. *Holmes County Bd. of Educ.*, *supra* and *Carter* v. *West Feliciana Parish School Bd.*, *supra*.

Accord, Ellis v. *Board of Public Instruction*, 465 F.2d 878 (5th Cir. 1972), *cert. denied*, 419 U.S. 966 (1973); *Boykins* v. *Fairfield Bd. of Educ.*, 457 F.2d 1091 (5th Cir. 1972); *Dowell* v. *Board of Educ.*, 465 F.2d 1012 (10th Cir.), *cert. denied*, 409 U.S. 1041 (1972); *Boyd* v. *Pointe Coupee Parish School Bd.*, 505 F.2d 632 (5th Cir. 1974), *rev'g* 332 F. Supp. 994 (E.D. La. 1971); *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 453 F.2d 1377 (4th Cir. 1972), *aff'g* 328 F. Supp. 1346 (W.D. N.C. 1971). The Fifth Circuit has required that jurisdiction be retained, with regular reporting to the court, for a period of at least three years, at which time a determination of unitary status may be appropriate.[37] *Wright* v. *Board of Public Instruction*, 445 F.2d 1397 (5th Cir. 1971); *Youngblood* v. *Board of Public Instruction*, 448 F.2d 770 (5th Cir. 1971); *United States* v. *Texas*, 509 F.2d 192 (5th Cir. 1975).

2. *The district court properly determined that Pasadena was not "unitary" at the time of its 1974 motions.* Petitioners' attack on the judgment below centers on the lower courts' conclusion that Pasadena had not been transformed, by the time of the hearings before the district court, into a "unitary school system." This is the central issue in the case, for as the majority opinion below notes,

[37] Even then, cases are not dismissed but placed on the inactive docket subject to being reopened for cause. *See, e.g., United States* v. *Hinds County School Bd.*, No. 28030 (5th Cir., January 9, 1974); A. 247-57. Thus, even "unitary" status would give Petitioners no license to take deliberate steps foreseeably leading to resegregation. *See Keyes* v. *School Dist. No. 1, Denver, supra; Hart* v. *Community School Bd.*, 512 F.2d 37, 50 (2d Cir. 1975); *Morgan* v. *Kerrigan*, 509 F.2d 580, 592 (1st Cir. 1974), *cert. denied*, 421 U.S. 963 (1975); *Berry* v. *Benton Harbor School Dist.*, 505 F.2d 238, 243 (6th Cir. 1974); *Oliver* v. *Michigan State Bd. of Educ.*, 508 F.2d 178, 182 (6th Cir. 1974), *cert. denied*, 421 U.S. 963 (1975); *United States* v. *School Dist. of Omaha*, 521 F.2d 530, 535-36 (8th Cir.), *cert. denied*, 44 U.S.L.W. 3280 (November 11, 1975); text at pp. 31-33, *infra*.

"the question of when and under what circumstances a school district may compel a federal district court to relinquish jurisdiction and end its supervision has not yet been directly addressed by any Court of Appeals or by the United States Supreme Court." 519 F.2d, at 431 n. 1. In our view, the courts below were correct in concluding that Petitioners had *not* completed the transition to unitary status at the time of the district court's ruling; thus, this case may not present an appropriate vehicle for answering that question.

Petitioners argue that jurisdiction (or its effective complement, authority to review school assignments) must be surrendered at the moment when a system becomes "unitary." We agree that the existence of a "unitary system" is a necessary prerequisite to either dismissal of a school desegregation case or to placement on the inactive docket. However, we submit, that condition is achieved only when a district court is satisfied that racial discrimination has been eliminated "root and branch," *Green, supra*, 391 U.S., at 438; a school board seeking dismissal or inactive status must demonstrate more than grudging compliance with a remedial decree.

Just as "[t]here is no universal answer to complex problems of desegregation," *Green, supra*, 391 U.S., at 439, so there is no simple formula for determining when a school system has become "unitary."[38] As with other critical decisions in the course of school litigation, this Court must "rely to a large extent . . . on the informed judgment of the district courts in the first instance . . . ." *Swann, supra*, 402 U.S., at 28. Obviously, the district courts, closest to the litigation, are in the best position to weigh all relevant facts and to determine whether all vestiges of discrimination have been eliminated. This Court should not lightly overturn a trial court's decision to maintain further supervision in order to complete

[38] In *Swann*, the parties agreed that "unitary" status had not been achieved. 402 U.S., at 7.

that task, nor counsel undue haste in ending judicial oversight; it may take more than a year or two to undo the results of decades of segregatory practices.[39]

In this case, there was no infirmity in the district court's ruling. Petitioners do not fairly characterize either the evidence presented to the court or the basis for the ruling when they focus only upon deviations from the "no majority of any minority" standard and their own, well-publicized commitment to changing Pasadena's pupil assignment plan (Pet. Br., pp. 16-20). The district court properly could and did consider a variety of factors before concluding that Pasadena was not "unitary."

Any determination that a school system previously segregated by law or by official act has become "unitary" must, at a minimum, be based upon a finding that there has been compliance with remedial judicial decrees. But, as we have argued, Constitutional sufficiency is achieved only when there has been, in addition, compliance with a plan that has proved *effective* to eliminate the vestiges of segregation.[40] Thus, irrespective of whether the "no majority of any minority" provision required literal compliance annually, or stated an overall objective that was feasible, the district court acted responsibly in examining the pattern of school enrollments which had developed by 1974. This scrutiny indicated a trend towards reestablishment of racially identifiable schools about which the district court was naturally concerned,[41] for

[39] In this case, for example, the district court found official action contributing to segregation which dated back to the construction of the Cleveland Elementary School in 1934. (311 F. Supp., at 517; A. 120.)

[40] *See* pp. 25-26 *supra*.

[41] Petitioners argue that demographic changes caused only minor shifts from the results anticipated in 1970, and that such shifts did not "destro[y] the unitary nature of the system created in 1970." (Pet. Br., p. 18.) It is evident, however, that the issue before the district court was whether its decree, as effectuated, had created a unitary system.

rapid resegregation certainly indicated ineffectiveness in either the design or execution of the court's decree.

Petitioners also misconstrue the district court's discussion of their vocal opposition to "forced busing" (375 F. Supp., at 1305-06; A. 453). The district court did not hold that Petitioners' "failure ["to abstain from speaking out against forced busing"] amounts to continuing segregation" (Pet. Br., p. 19). Rather, the court examined Petitioners' statements and conduct in an attempt to assess whether realistic efforts had been made to implement the decree,[42] and what would be the effect of the free choice alternative submitted in 1974. A school system that purported to make nonracial decisions only reluctantly and under the pressure of a mandatory injunction from 1970 to 1974, and which stood ready to resume at best ineffective and at worst unlawful ways as soon as restraints were lifted, could hardly be said to be "unitary," for we reiterate that the court's obligation was to "bar like discrimination in the future." *Louisiana* v. *United States*, *supra*.

The district court was also presented with other evidence directly relevant to the determination of "unitary" or "nonunitary" status. It knew that Petitioners had failed to follow the procedures established in their plan, approved in its 1970 decree, requiring affirmative action in the hiring and promotion of administrators to overcome prior discrimination.[43] It was simultaneously presented with a new pupil assignment scheme which it was informed Petitioners would implement, if permitted, and which would reestablish racially identifiable schools

[42] The district court commented: "No one can now estimate the possible results of the Pasadena Plan had it enjoyed the continued support of a Board who would act, as they profess, to 'do unto others as you would have done unto you.'" 375 F. Supp., at 1308; A. 458.

[43] *See* pp. 23-24, *supra*.

in Pasadena through "free choice" devices which had not, in the past, demonstrated any integrative potential in Pasadena."[44] These facts were reflective of the school board's attitude toward desegregation, and were indicative of whether a "unitary system" had been established. For, as this Court observed in *Keyes*, *supra*, 413 U.S., at 196, with respect to individual schools:

> What is or is not a segregated school [system] will necessarily depend on the facts of each particular case. In addition to the racial and ethnic composition of [the] school[s'] student bod[ies], other factors, such as the racial and ethnic composition of faculty and staff and the community and administration attitudes toward the school[s], must be taken into consideration.

Taking all of the circumstances into account, it is difficult to find fault with the district court's conclusion that

> . . . I think from the evidence presented to me I still find some vestiges that would indicate that the Board has not completely made this School District a unitary school district.

(Oral Opinion of district court, quoted at 519 F.2d, at 444 n. 7). As the majority below stated,

> On the specific facts of this case as revealed from the record and reiterated *supra*, it was reasonable for the District Court to conclude that full and effective elimination of racial discrimination had not been achieved during the three school years following the initial year in which the Pasadena plan was in effect. [519 F.2d, at 437.]

An instructive contrast to this case is the recent order entered by Judge McMillan in the *Swann* case, closing the record and placing the case on inactive status. Judge McMillan found:

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[44] See pp. 20-22 *supra*.

> Since early 1974, the case has been quiet. No new or old issues have been raised by the litigants or decided by the court. The new Board has taken a more positive attitude toward desegregation and has at last openly supported affirmative action to cope with recurrent racial problems in pupil assignment. Though continuing problems remain, as hangovers from previous active discrimination, defendants are actively and intelligently addressing these problems without court intervention. It is time, in the tenor of the previous order, to be "closing the suit as an active matter of litigation . . . ."
>
> Dismissal is neither usual nor correct in a case like this where continuing injunctive or mandatory relief has been required. Facts and issues once decided on their merits ought, generally, to remain decided. This case contains many orders of continuing effect, and could be re-opened upon proper showing that those orders are not being observed. The court does not anticipate any action by the defendants to justify a re-opening; does not anticipate any motion by plaintiffs to re-open; and does not intend lightly to grant any such motion if made. This order intends therefore to close the file; to leave the constitutional operation of the schools to the Board, which assumed that burden after the latest election; and to express again a deep appreciation to the Board members, community leaders, school administrators, teachers and parents who have made it possible to end this litigation.

Swann v. *Charlotte-Mecklenburg Bd. of Educ.*, Civ. No. 1974 (W.D.N.C., July 11, 1975).

3. *The district court was right in refusing to permit implementation of Petitioners' alternative plan, even if Petitioners would otherwise have been entitled to have the case placed on inactive status.* Even if the district court had been of the view that Petitioners' actions from 1970 to 1974, and the results thereof, were sufficient to suggest that a "unitary school system" was nearly achieved, so

that the lawsuit might be removed from the active docket (*see* note 26 *supra*), it does not follow that the court was without authority to prevent Petitioners from implementing their alternative plan. It is one thing to say that

> [n]either school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system

(*Swann, supra*, 402 U.S., at 31-32), and quite another to insist that a school district which was deliberately segregated by official action may, after initial implementation of an adequate desegregation decree, choose to return to a pupil assignment technique which is ineffective to prevent segregation and pursuant to which schools would reassume the racial identities they had under the dual system.

The posture of this case in the district court was not an unusual one. School districts have frequently sought to reinstitute discriminatory assignment methods after a brief flirtation with a Constitutional plan. *E.g., Lemon* v. *Bossier Parish School Bd.*, 444 F.2d 1400, 446 F.2d 911 (5th Cir. 1971). *See also, Wright* v. *Council of the City of Emporia, supra.*[45] In these instances, federal courts

[45] Except for the timing and the particular "unitary system" claim made by Petitioners, this case bears a remarkable resemblance to *Emporia*. Each involves a new assignment plan sought to be justified on educational grounds in the district court; each involves a claim that "white flight" necessitated the change; each involves a district court judgment about the substantiality of enrollment ratio variances within a school district under a duty to desegregate; and in each there is other evidence bearing on the permissibility of the change. And even as to timing, the cases are more similar than different because it is clear from the record in this action that Petitioners' proposal (or one more blatantly segregative, *see* A. 422-34, 479-84) would have been presented to the district court in 1971 had the recall election succeeded (*see* A. 272-81).

have determined whether the new proposals "hinde[r] or furthe[r] the process of school desegregation. If the proposal would impede the dismantling of the dual system, then a district court, in the exercise of its discretion, may enjoin it from being carried out." *Wright, supra*, 407 U.S., at 460. *Cf. United States* v. *Scotland Neck City Bd. of Educ., supra.*

These standards are applicable to the instant case. Even if the district court had placed this matter on the inactive docket in 1974, the plaintiffs would have been entitled to reopen in order to prevent implementation of the Petitioners' alternative plan, unless Petitioners could make a better showing than they did below of the plan's potential for avoiding reimposition of the dual system. It simply confounds common sense to suggest that the elimination of racial discrimination is totally completed on a given day, and that new and segregative assignment methods must thereafter be judged without reference to the prior Constitutional violation. *Cf. Keyes* v. *School Dist. No. 1, Denver, supra.*

Finally, Petitioners argue that the trial court invalidly rejected "an educational decision by the Pasadena School Board" (Pet. Br., p. 23). However, the record indicates, and the district court found,[46] that the educational innovations contained in Petitioners' alternative plan could, and already were, being offered within the framework of the 1970 decree. But whatever the considrations advanced by Petitioners, the district court acted correctly in preventing deliberate action which would foreseeably have increased segregation and threatened the existence of a "unitary" school system. See *Keyes, supra; Wright, supra;* cases cited in note 37 *supra; cf. Gilmore* v. *City of Montgomery*, 417 U.S. 556 (1974).

[46] *See* A. 511-13, 526-29; 375 F. Supp., at 1308, A. 457.

III

Reversal of the Judgment Below Would Encourage New Schemes To Evade or Frustrate The Mandate Of the Fourteenth Amendment.

We have argued above that the judgments of the district court and the Court of Appeals in this case are consistent with the school desegregation cases previously decided by this Court. *Amici* also feel constrained, based on their long and intimate familiarity with the course of school desegregation efforts in this country,[47] to address the broader effects to be anticipated from a decision by this Court in Petitioners' favor. For such a decision would have ramifications beyond the narrow facts of the instant case.

Amici believe that reversal of the judgments of the courts below will inevitably encourage—and even resuscitate—efforts to subvert school desegregation decrees. Regrettably, these renewed efforts will come just at the point when these decrees have, by virtue of perseverance, begun to offer the promise of altering the ingrained discriminatory habits of the past. Whatever the explicit reasoning of an opinion that fails to sustain the result below, a reversal will be perceived by those who have never accepted Constitutional authority as a signal that affirmative Constitutional obligations need be grudgingly satisfied for a brief period of years only, before returning to a system of segregated education. And, to paraphrase this Court's opinion in *Swann*, the future will bring renewed "deliberate resistance of some to the Court's mandates" and "fresh evidence of the dilatory tactics of many school authorities." 402 U.S., at 13, 14.

This Court, the Courts of Appeals, and the District Courts have been quite properly solicitous of ending an active federal judicial role in school desegregation cases

[47] *See* note 3, *supra*.

at the earliest opportunity. This Court's prior decisions suggest that opportunity will arise when a district court is satisfied that a unitary system—which (1) effectively implements an acceptable means of pupil assignment, (2) achieves *actual* desegregation, and (3) eliminates other vestiges of discrimination—has been constructed and will be maintained. *Green* v. *County School Bd. of New Kent County, supra; Raney* v. *Board of Educ., supra; Alexander* v. *Holmes County Bd. of Educ., supra; Swann* v. *Charlotte-Mecklenburg Bd. of Educ., supra.* Pursuant to this standard, scores of desegregation actions have been closed on the active dockets of United States District Courts. Most of these cases are in the South,[48] but in Northern cases as well, experience indicates that controversy over desegregation fades and acceptance grows after the initial period of implementation.[49]

This achievement, which represents nothing less than bringing to substantial fruition the promise of *Brown*, would be jeopardized by a decision that weakens the authority of the district courts to retain active jurisdiction until they are satisfied that a unitary system has been implanted. Equally tragic, a decision in Petitioners' favor in the instant cases will also be interpreted as a withdrawal of this Court's support for the courageous, untiring efforts of district judges to uphold the Constitution which have characterized the history of school desegregation since 1954.

We respectfully submit that these developments are both foreseeable and relevant to the disposition of this

[48] For example, to *amici's* knowledge, cases throughout Virginia, North Carolina, Georgia, Florida, Mississippi and Louisiana have been closed by the entry of decrees similar to those set out at A. 247-57. Such cases include both *Green* v. *County School Bd. of New Kent County* and *Swann*, see p. 31 *supra*.

[49] *See, e.g.*, N.Y. Times, Dec. 3, 1975, p. 30 (Pontiac, Michigan).

cause. Petitioners' 1974 motions were the culmination of a campaign against the judicial finding of unlawful segregation and the judicial decree to remedy it which began virtually the day the decree was entered. That the methods employed were more ingenious than direct resistance, *see Cooper* v. *Aaron*, *supra*, is of little solace to the minority citizens of Pasadena who face the reconstruction of a racially divided school system if the latest campaign is permitted to succeed, although earlier efforts did not. In short, this case involves the continued integrity of the commitment in *Brown* to a complete transition to a racially nondiscriminatory system of schooling. We urge the Court not to weaken that commitment, but rather to keep alive for future generations the hope for an open society which was kindled twenty-two years ago.

CONCLUSION

For the foregoing reasons, *amici* urge that the judgment of the Court of Appeals be affirmed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-164

PASADENA CITY BOARD OF EDUCATION, *et al.*,

Petitioners,

v.

NANCY ANNE SPANGLER, *et al.*,

Respondents,

and

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF *AMICUS CURIAE* OF THE N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

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BRIEF *AMICUS CURIAE* OF THE N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

Interest of *Amicus**

The N.A.A.C.P. Legal Defense and Educational Fund, Inc., is a non-profit corporation, incorporated under the laws of the State of New York to assist blacks to secure their constitutional rights through the courts. Its charter declares that its purposes include rendering legal aid

---

* Letters of Consent from counsel for the petitioners and respondents in this case have been filed with the clerk of the Court.

gratuitously to blacks suffering injustice by reason of race who are unable, on account of poverty, to employ legal counsel on their own behalf. The charter was approved by a New York court, authorizing the organization to serve as a legal aid society. The N.A.A.C.P. Legal Defense Fund, Inc., is independent of other organizations and is supported by contributions from the public. For many years its attorneys have represented parties in this Court and the lower courts, and it has participated as *amicus curiae* in this Court and other courts.

Attorneys from the N.A.A.C.P. Legal Defense and Educational Fund, Inc. litigated before this Court the landmark case of *Brown* v. *Board of Education*, 347 U.S. 483 (1954) which declared unconstitutional state-imposed segregation of the races in public education. Since *Brown*, its attorneys have been actively involved in litigation designed to ensure that the mandate of that decision was properly and effectively implemented by lower federal courts. In *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), a case also handled by Legal Defense Fund attorneys, this Court attempted to provide guidance to lower federal courts and school boards with respect to the nature and degree of desegregation required by *Brown*, nearly seventeen years after that decision became the law of the land.[1] It was clearly this Court's hope that segregated school systems would proceed with the job of converting to unitary status. Thereafter, federal courts could turn their limited resources to other important

[1] Between *Brown* and *Swann*, Legal Defense Fund attorneys argued the following desegregation cases, among others, before this Court: *Brown* v. *Board of Education*, 349 U.S. 294 (1955); *Cooper* v. *Aaron*, 358 U.S. 1 (1958); *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218 (1964); *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968); and *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969).

matters, leaving school boards with full authority to manage their educational programs free of judicial intervention or supervision.

In this litigation, the Court is faced for the first time with the task of construing language in *Swann* relating to the circumstances under which federal court jurisdiction over a desegregation case may appropriately be ended. In that regard, *Swann* stated

> At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in Brown I. The systems would then be "unitary" in the sense required by our decisions in Green and Alexander.
>
> It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary. 402 U.S. 1, at 31-32.

Based upon the extensive involvement of Fund attorneys in school desegregation cases over the years, we submit that this Court's decision in *Swann* has been a significant, positive force in increasing the pace and improving the

quality of efforts to dismantle dual systems of public education. But, meaningful changes brought about by *Swann* did not happen overnight. Since 1971, lower federal courts, with few exceptions, have been required to exercise close and continuing supervision of various systems to ensure that acceptable desegregation plans would be devised and effectively implemented.

In some situations, many of which are handled by Legal Defense Fund attorneys, court supervision is still necessary. This brief is being filed to bring to the Court's attention considerations which warrant application of a realistic standard for determining whether lower federal courts have properly decided to retain jurisdiction over desegregation cases.

Argument

Almost seventeen years passed after *Brown* before extensive compliance got underway. Given this history of resistance it is not surprising that court efforts to secure compliance with *Swann* have encountered more than a little difficulty. In some systems, boards resisted assuming responsibility for devising plans that achieved the "greatest possible degree of desegregation;" other devised plans that appeared on paper to have prospects for eradicating segregation but proved ineffective. Yet others have implemented generally acceptable desegregation plans that have required minor adjustments after implementation to ensure continued effectiveness. In each case, successful desegregation has depended largely upon the extent to which the lower federal courts have faithfully discharged the crucial supervisory roles this Court defined in *Swann*. Where courts have insisted that boards produce desegregation plans that worked and worked realistically "now," and have required boards to make adjustments to avoid foreseeable

resegregation, stable desegregated systems have resulted. Where courts have accepted "paper compliance" and resisted the duty to review how so-called unitary plans operated in practice, unstable, resegregated and dislocated systems have developed. In the former situations, courts have been able to get out of the desegregation business; in the latter, litigation persists. As the Fifth Circuit Court of Appeals pointed out, "one swallow does not make a spring." *Lemon* v. *Bossier Parish School Board,* 444 F.2d 1400, 1401 (5th Cir. 1971): even under the best of circumstances, district courts should observe the operation of a desegregation plan in practice for a few years before declaring a system unitary.[2]

Here, the Pasadena City Board of Education asserts that it has dismantled its dual system and should be freed from further judicial supervision. Alternatively, it argues that continuing supervision does not justify its being prohibited from instituting a new student assignment plan which it regards as educationally superior to one previously approved by court order. The respondents contend that the Pasadena Board has not entirely satisfied the requirements of *Brown* and *Swann* and that the proposed new plan would resegregate, not further desegregate, the Pasadena system. Both the district court and the court of appeals below have agreed that continuing supervision is required and that the Board's new proposal would not advance desegregation. Presented for this Court's reso-

[2] In fact, the Fifth Circuit, after *Swann*, established a circuit-wide rule that district courts should retain jurisdiction of desegregation cases where terminal plans had been implemented for "not less than three school years," during which time affected school boards must file semi-annual reports on such things as pupil and teacher assignments, proposed construction, transportation and student transfers. At the end of the three-year period, dismissal may be granted only after plaintiffs have received notice and the opportunity to be heard. *Youngblood* v. *Board of Public Instruction,* 448 F.2d 770 (5th Cir. 1971).

lution, therefore, is the question of whether the lower courts abused their discretion and acted contrary to *Swann* by determining that continued supervision of the Pasadena system was necessary under the circumstances.

We submit that the Court would be aided in deciding this case by the example of the *Swann* case itself, where active, close, sensitive, yet resolute, lower federal court supervision successfully moved a dual system to the point of stable desegregation, warranting an end to judicial intervention. By assessing the facts which the district court addressed in achieving compliance in *Swann*, this Court may perceive the Pasadena case in a useful perspective.

On May 6, 1971, plaintiffs in *Swann* filed a motion for further relief in the trial court seeking an order 1) requiring the defendant Board to comply with previous desegregation orders and 2) enjoining the Board from proceeding with any school construction, additions, or abandonments without judicial approval. On June 17 and 18, 1971, the district court held hearings with respect to a Board proposal to alter the Charlotte-Mecklenburg desegregation plan (the "Finger Plan") upheld by this Court in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). These "partly formed proposals" involved the following notable changes: 1) closing two formerly black schools; 2) utilizing a formerly high school; 3) reducing the capacity of 15 formerly black elementaries; 4) converting 9 of these 15 elementaries to sixth grade centers; 5) employing "one-way" busing of blacks to formerly all-white schools; 6) increasing the number of vacant classrooms in the system; and 7) increasing the busing times and distances particularly for black children. The Court's response, in its memorandum of June 22, 1971 was:

> [W]hen the plan is studied in depth and its purposes and results emerge through its statistics, it becomes apparent that it seeks to raise issues which were decided two years ago; that it is regressive and unstable in nature and results; that it would retreat from approved arrangements and put the burdens of desegregation primarily upon the black race; that it would unlawfully discriminate against black children; that its methods are discriminatory; and that it should not be approved. *Swann* v. *Charlotte-Mecklenburg Board of Education*, 328 F.Supp. 1346, at 1350 (W.D.N.C. 1971)

The court, noting that "'white flight' was advanced as the chief reason for the board's proposals," concluded that it was not a "serious threat to the public schools of Mecklenburg." *Id.* at 1352. In response, the Board withdrew its proposals and promised to present revised suggestions within a few days. The revised proposals, a "feeder plan," envisioned the closing of one black school (Double Oaks) and the use of two others (Villa Heights and University Park) as sixth grade centers. In its order of June 29, 1971, the court found no valid, non-racial reasons for these proposals. The court decided, however, to allow the Board the option of implementing its feeder plan, as long as Double Oaks was not closed and Villa Heights and University Park were used to capacity, or of continuing to utilize the "Finger Plan." In any event, the court ruled that:

> The defendants are enjoined and restrained from operating any school for any portion of a school year with a predominantly black student body. The movement of children from one place to another within the community and the movement of children into the community are not within the control of the school board. The *assignment* of those children to particular

schools *is* within the total control of the school board. The defendants are therefore restrained from assigning a child to a school or allowing a child to go to a school other than the one he was attending at the start of the school year, if the cumulative result of such assignment in any given period tends substantially to restore or to increase the degree of segregation in either the transferor or the transferee school.[3] 328 F.Supp. at 1349-50.

On an appeal to the Fourth Circuit Court of Appeals of this decision by the Board, the district court was unanimously affirmed, *en banc*. *Swann* v. *Charlotte-Mecklenburg Board of Education*, 453 F.2d 1377 (4th Cir. 1972).

On August 27, 1971, plaintiffs filed a motion for further relief alleging as grounds for court action as follows:

> At the board meeting on April 24, 1971, the board disregarded its conditional transfer provision for senior high school students and transferred all senior high school students who had indicated a desire to transfer to another school. This has resulted in resegregation of West Charlotte High School, the previously all black school, and has substantially reduced the number of students assigned to that school for the 1971-72 school year. Additionally, the board has permitted transfers of students in other grades in a way which has promoted resegregation of schools. The board has also failed to determine the correct addresses of students and has thereby permitted the assignment of many students to schools other than the ones they were to

[3] This order merely restated an earlier requirement with respect to the Board's duty to prevent the creation of all-black or predominantly black schools, approved by this Court. See 311 F.Supp. 265, 268 (W.D.N.C. 1970).

> attend under the Board's proposed Feeder plan. This is [sic] further tended to resegregate the schools.
>
> [and]
>
> Since the Court's June 29, 1971 order, the board has made numerous changes in the proposed Feeder Plan it previously submitted to the Court. The board has not filed copies of these changes with the court or served copies of same upon counsel for the plaintiffs. (pp. 2-3)

After a hearing conducted on September 22, 1971 with respect to these allegations, the court found on October 21, 1971, that "several highly specific official actions of the school board itself since the April, 1971 decision of the Supreme Court have added new official pressures which tend to restore segregation in certain schools." 334 F.Supp. 623, at 628 (W.D.N.C. 1971). It identified these pressures as stemming from 1) the construction program (use and location of mobile units), 2) the under population and proposed closing of formerly black schools, and 3) several recent decisions about pupil assignments and transfers. The court pointed out that the current plan contemplated the use of 232 mobile units, primarily at suburban schools remote from the black community, that black schools were being operated at considerably less than capacity, that low- and middle-income white children were being assigned to and wealthier white children removed from formerly black schools and that the Board had allowed numbers of white children to abandon and black children to return to formerly black schools in violation of existing court orders. *Id.* at 628. The court indicated moreover that:

> With that history in view, it is necessary to inquire into the board's present plan or program for dealing

with foreseeable problems of re-segregation in response to the pressures which have been mentioned in this order. If the board has a program or policy to deal with the results of these pressures, the schools can nevertheless be operated in compliance with the law. If it has no plan, many of the schools are likely to re-segregate.

There is no such plan and no such program.

On the issue of "resegregation" of certain formerly all-black elementaries under the feeder plan, the court pointed out that this result was caused by the Board's failure to make allowance for the 1,500 westside, low-cost, principally black housing units which were currently being completed or occupied. It concluded:

> Racial discrimination through official action has not ended when a school board knowingly adopts a plan likely to cause a return to segregated schools and then refuses to guard against such resegregation.
>
> It is therefore apparent that although the current plan *as now working* should be approved, the case will have to be kept active for a while longer. *Id.* at 629.

Plaintiffs' motion for further relief was denied by the court.

On November 7, 1972, plaintiffs filed a motion for further relief seeking an order:

> . . . directing the defendants to take immediate steps to eliminate the continued racial identity of West Charlotte Senior High School and continued racial discrimination with respect to professional personnel (p. 1).

On April 2, 1973, plaintiffs filed a motion to add additional parties defendants—new board members and white plaintiffs in a new suit. Plaintiffs alleged that:

> The Board has failed to comply with the Court order. Several schools have now or are becoming resegregated because of the Board's plan and the Board's failure "to adopt and implement a continuing program . . . of assigning pupils . . . for the conscious purpose of maintaining each school . . . in a condition of desegregation."

At a May 8, 1973 hearing, the Board proposed what the court described as a " 'bare minimum' or 'get by' " group of changes. The court suggested that it would be wise for the Board to develop a more comprehensive revision for 1974-75 implementation, and directed that certain changes be made in its plan for 1973-74. On May 18, the Board returned to court with these 1973-74 revision.

In its order of June 19, 1973, the court approved modifications for the 1973-74 academic year but required the Board to prepare by March 1, 1974 a comprehensive plan for "pupil assignment and desegregated school operation" to be implemented at the start of the 1974-75 school year. Though the court found that much genuine progress was promised by current Board proposals, it concluded that they did "not yet satisfy the constitutional requirements of equal protection of the laws (fairness)" and that continuing jurisdiction was still required.

Of particular relevance to the issues in the Pasadena case before the Court is the court's analysis of the relationship between pupil assignments and so-called "white flight" within the Charlotte-Mecklenburg system:

> Defendants proposed to increase the West Charlotte studenty body by transferring to West Charlotte 180 white and 100 black students from the Statesville

Road (North High School) area and 350 white and 125 black students from the Devonshire (Independence High School) area . . .

The problem with the proposal is not with its numerical results, but with its fairness and stability.

• • •

The sore spot may not really be the assignment to a school eight or ten miles away (high school students usually have to travel quite a ways to school); nor, it is to be hoped, is it the educational shortcomings of West Charlotte; West Charlotte is not expected to suffer any deficiency of academic offerings nor extracurricular activities in the future. Rather, the sore spot with the people of Devonshire and elsewhere in the Garinger-North-West Charlotte-Harding area is that people in the southeast part of the county, including many who live closer to West Charlotte High School than Devonshire, are not being required to attend a "black" school at any time during their high school career (nor, as a practical matter, for more than a year or two at any stage of their education). If the assignments were done in fairness instead of in such a way that they effectively re-zone real estate and drastically affect land values, most, but of course not all of the valid objections would be reduced or eliminated.

Significantly, the Pupil Assignment Study (p. 10)[4] reports that "the assignment plan has had greater and more immediate effect on housing in Charlotte than on the schools."

A fair plan would not have such effects.

362 F. Supp. 1223 at 1235-36. (W.D.N.C. 1973).

[4] This study was done in March, 1973 by Board staff.

The Board's appeal of this June 19, 1973 district court opinion and order was dismissed on January 15, 1974 by the Fourth Circuit Court of Appeals, sitting *en banc*. *Swann* v. *Charlotte-Mecklenburg,* 489 F.2d 966 (4th Cir. 1974).[5]

On July 10, 1974, the Board submitted to the court a comprehensive desegregation plan for Charlotte-Mecklenburg schools to be implemented for the 1974-75 academic year. In approving this plan by order of July 30, 1974, the district court remarked as follows:

> Adoption of these new guidelines and policies is understood as a clean break with the essentially "reluctant" attitude which dominated Board actions for many years. The new guidelines and policies appear to reflect a growing community realization that equal protection of laws in public education is the concern of private citizens and local officials and is not the private problem of courts, federal or otherwise. This court welcomes the new guidelines and policies and the new plan, and the declared intention of the new Board to carry them out. If implemented according to their stated principles, they will produce a "unitary" (whatever that is) school system. 379 F. Supp. 1102, 1103 (W.D.N.C. 1974).

The court noted that the comprehensive plan would include the following features, among others (1104-05):

1) Transfer policies and procedures for the purpose of maintaining an integrated school system with a stable assignment program;

[5] On December 10, 1973, the district court enjoined certain white parents from prosecuting a state action which challenged the Board's decision to increase black participation in a program for talented students. The Court of Appeals affirmed this ruling on July 23, 1974. *Swann* v. *Charlotte-Mecklenburg Board of Education,* 501 F.2d 383 (4th Cir. 1974).

2) Distances of bus travel have been somewhat reduced; years of bussing for many children have been reduced; and the burdens of bussing have been more equally, though of course not perfectly, redistributed;

3) Monitoring procedures to prevent adverse trends in racial make-up of schools are promised; and

4) School location, construction and closing are to be planned to simplify rather than to complicate desegregation.[6]

On July 11, 1975, the United States District Court for the Western District of North Carolina closed its files on *Swann* v. *Charlotte-Mecklenburg Board of Education*, Civil No. 1974, with the following words:

> Dismissal is neither usual nor correct in a case like this where continuing injunctive or mandatory relief has been required. Facts and issues once decided on their merits ought, generally, to remain decided. This case contains many orders of continuing effect, and could be re-opened upon proper showing that those orders are not being observed. The court does not anticipate any action by the defendants to justify a re-opening; does not anticipate any motion by plaintiffs to re-open; and does not intend lightly to grant any such motion if made. This order intends therefore to close the file; to leave the constitutional operation of the schools to the Board, which assumed that burden after the latest election; and to express again a deep appreciation to the Board members, community leaders, school administrators, teachers and parents who have made it possible to end this litigation. (*Slip op.* at 1-2)

[6] In *Swann*, this Court emphasized the important role that school board decisions with respect to construction of new schools and the closing of old ones play in determining whether a system remains desegregated or resegregates. *Id.* at 20.

A copy of this entire "Swan Song," as the district court characterized its final order, is included in Appendix A hereto.

The Charlotte-Mecklenburg experience described above demonstrates several important points about the appropriate nature, extent and duration of federal court supervision of so-called "unitary" systems.[7] First, even the best desegregation plan on paper may require extensive revisions and modifications in practice. An entirely new plan may be necessary where original proposals for desegregation have proved unworkable and ineffective. Second, a desegregation plan will be effective only if the school board wants it to work. Even in the absence of actual bad faith, the oversight of a district court is crucial to ensure that disregard for the segregative consequences of board conduct will not go uncorrected. Third, plans which place the burden of desegregation upon blacks and low- and middle-income whites, while leaving "protectorates" of wealthier whites untouched, have produced resistance, instability and "white flight." "Fair" plans may be expected to have the opposite effect. Fourth, the key to a successful plan, which a court can expect with confidence to effect compliance with *Brown* and *Swann* in the long run without judicial supervision, is a school board that accepts affirmative constitutional responsibility to establish and maintain a desegregated system. Compare the ways in which the court described the two Charlotte-Mecklenburg boards in office between April, 1971 and July, 1975. In passing upon the 1973 Board's proposals for 1973-74, the court remarked:

> Until now, defendants had taken no initiative whatever in coping with problems of desegregation; their

[7] Charlotte-Mecklenburg's history is not unique. In Appendix B, hereto, we have listed from the Legal Defense Fund's docket 31 cases in 12 states where significant litigation occurred after *Swann*. These cases have also either been dismissed or are inactive, subject to montoring through periodic reports filed by affected school boards.

> actions have awaited court orders or instructions, and have been based on minimum interpretation of what compliance would require. 362 F.Supp. 1223, at 1236-37.

In its order dismissing the case, the court referred to the Board now in office in the following manner:

> Since early 1974, the case has been quiet. No new or old issues have been raised by the litigants or decided by the court. The new Board has taken a more positive attitude toward desegregation and has at last openly supported affirmative action to cope with recurrent racial problems in pupil assignment. Though continuing problems remain, as hangovers from previous active discrimination, defendants are actively and intelligently addressing these problems without court intervention. It is time, in the tenor of the previous order, to be "closing the suit as an active matter of litigation . . ."

The lesson of Charlotte-Mecklenburg then, for purposes of this Court's determination of the issues raised in the Pasadena case, is that in moving a segregated school system to unitary status:

> Th attitude or state of mind at the top, among the Board of Education, is far more important than the physical details or logistics of pupil assignment. If that attitude or policy is negative or technical, the children know it and feel it; then "ratios" and "bussing" assume unwanted but unavoidable significance. On the other hand, if the top level attitude or policy is equal treatment for all, the word gets around; hackles fall; litigants and lawyers and courts get easier to please; and the details of pupil assignment become less controversial and more commonplace.

> And the recurrent injury to the spirits and motivation of the children themselves—as well as the unrest among parents—can be alleviated. 379 F.Supp. at 1104.

In Pasadena, the petitioner school board has shown hostility to making desegregation work, a commitment to doing the very minimum to comply with court orders, and a desire to replace the current plan with an approach that offers strong possibilities for resegregating the system. Under such circumstances, the trial and appellate courts were correct in determining that continuing judicial supervision of the Pasadena system was necessary and proper. Until the Pasadena board demonstrates that it has the commitment to make desegregation work, an appraisal the trial court is uniquely qualified to make, *Swann* validates an exercise of discretion which determines that judicial supervision should continue.

CONCLUSION

For the foregoing reasons, the decisions below should be affirmed by this Court.

Respectfully submitted,

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APPENDICES

Appendix A

Final Order of the District Court

(Filed July 11, 1975)

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

Charlotte Division

Civil No. 1974

JAMES E. SWANN, *et al.*,

Plaintiffs,

—VS—

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, *et al.*,

Defendants.

FINAL ORDER
(SWANN SONG)

On July 10, 1974, defendants filed a report covering certain changes in the proposed 1974-75 pupil assignment plan, and requested the court to dismiss the suit. On July 30, 1974, the court entered an order approving the revised plan under specified conditions, and expressing appreciation to the Board, the Citizens Advisory Group and the school staff people and others who had worked to make it possible. The order closed with the comment that, after May 1, 1975,

> ". . . assuming and believing that no action by the court will then be required, I look forward with

pleasure to closing the suit as an active matter of litigation . . ."

Since early 1974, the case has been quiet. No new or old issues have been raised by the litigants or decided by the court. The new Board has taken a more positive attitude toward desegregation and has at last openly supported affirmative action to cope with recurrent racial problems in pupil assignment. Though continuing problems remain, as hangovers from previous active discrimination, defendants are actively and intelligently addressing these problems without court intervention. It is time, in the tenor of the previous order, to be "closing the suit as an active matter of litigation . . ."

Dismissal is neither usual nor correct in a case like this where continuing injunctive or mandatory relief has been required. Facts and issues once decided on their merits ought, generally, to remain decided. This case contains many orders of continuing effect, and could be re-opened upon proper showing that those orders are not being observed. The court does not anticipate any action by the defendants to justify a re-opening; does not anticipate any motion by plaintiffs to re-open; and does not intend lightly to grant any such motion if made. This order intends therefore to close the file; to leave the constitutional operation of the schools to the Board, which assumed that burden after the latest election; and to express again a deep appreciation to the Board members, community leaders, school administrators, teachers and parents who have made it possible to end this litigation.

The duty to comply with existing court orders respecting pupil assignment of course remains. So, also, does

the duty to comply with constitutional and other legal requirements respecting other forms of racial discrimination.

Ghosts continue to walk. For example, some perennial critics here and elsewhere are interpreting Professor James Coleman's latest dicta in support of the notion that courts should abandon their duty to apply the law in urban school segregation cases. Coleman is worried about "white flight," they say; school desegregation depends on Coleman; therefore the courts should bow out; *"cessante ratione, cessat ipsa lex,"* they say.

The local School Board members have not followed that siren. Perhaps it is because they realize that this court's orders, starting with the first order of April 23, 1969, are based, not upon the theories of statisticians, but upon the Constitution of the United States, and because they recall and are prepared to follow the law of this case which, as to Coleman, is contained in the order of August 3, 1970 (318 F.Supp. 786, 794, W.D.N.C. 1970), as follows:

> *"The duty to desegregate schools does not depend upon the Coleman report, nor on any particular racial proportion of students* [emphasis from original]. —The essence of the *Brown* decision is that segregation implies inferiority, reduces incentive, reduces morale, reduces opportunity for association and breadth of experience, and that the segregated education itself is inherently unequal. The tests which show the poor performance of segregated children are evidence showing one result of segregation. *Segregation would not become lawful, however, if all children scored equally on the tests."* (Emphasis added.)

Appendix A

I do not anticipate a revival, in the Charlotte-Mecklenburg school system, of this and other questions which have already been exhaustively (and expensively) litigated and definitively answered.

With grateful appreciation to all who have made possible this court's graduation from *Swann*, it is therefore

ORDERED:

1. That this cause be removed from the active docket.
2. That the file be closed.

This 11th day of July, 1975.

/s/ JAMES B. MCMILLAN
James B. McMillan
United States District Judge

Appendix B

ALABAMA

Hereford v. *Huntsville Board of Education*, 504 F.2d 857 (5th Cir. 1974)*—Terminal desegregation plan approved February 19, 1975.

Miller v. *Board of Education of Gadsden*, 482 F.2d 1234 (5th Cir. 1973)—Terminal desegregation plan ordered September 11, 1973.

ARKANSAS

Clark v. *Board of Education of Little Rock*, 449 F.2d 493 (8th Cir. 1971), cert. denied 405 U.S. 936 (1972)—Plaintiffs entered into stipulation barring litigation over plan in force for at least two years from June 28, 1973 and for so long as Board abides by plan implemented for 1973-74 and for future years.

Davis v. *Board of Education of North Little Rock*, 449 F.2d 500 (8th Cir. 1971)—Terminal desegregation plan implemented in 1971-72.

Yarborough v. *Hulbert-West Memphis School Dist. No. 4*, 457 F.2d 333 (8th Cir. 1972)—Terminal desegregation plan ordered February 11, 1972.

FLORIDA

Allen v. *Board of Public Instruction of Broward County*, 432 F.2d 362, *cert. denied* 402 U.S. 952 (1971)—Terminal desegregation plan ordered June 21, 1971.

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* Citations to the latest reported decisions in these cases are included primarily for purposes of identification.

Appendix B

Bradley v. *Board of Public Instruction of Pinellas County,* 431 F.2d 1377, *cert. denied* 402 U.S. 943 (1971)—Terminal desegregation plan ordered January 11, 1972.

Ellis v. *Board of Public Instruction of Orange County,* 465 F.2d 878, *cert. denied* 410 U.S. 966 (1973)—Terminal desegregation plan approved December 30, 1972.

Harvest v. *Board of Public Instruction of Manatee County,* 429 F.2d 414, *cert. denied* 402 U.S. 943 (1971)—Case dismissed from active docket, September 15, 1973; reporting required as to proposed new construction.

Steele v. *Board of Public Instruction of Leon County,* 448 F.2d 767 (5th Cir. 1971)—Terminal plan ordered May 10, 1974, reinstating plan approved January 30, 1970.

Weaver v. *Board of Public Instruction of Brevard County,* 467 F.2d 473, *cert. denied* 410 U.S. 982 (1973)—Terminal plan approved May 15, 1973.

Youngblood v. *Board of Public Instruction of Bay County,* 448 F.2d 770 (5th Cir. 1971)—Terminal plan approved for 1971-72.

GEORGIA

Harrington v. *Colquitt County Bd. of Education,* 460 F.2d 193, *cert. denied* 409 U.S. 915 (1972)—Terminal plan ordered October 27, 1972.

Lockett v. *Board of Education of Muscogee County,* 442 F.2d 1336 (5th Cir. 1971).

LOUISIANA

Celestain v. *Vermillion Parish School Board,* 364 F.Supp. 618 (W.D. La. 1972)—Terminal plan ordered December 30, 1974; case placed on inactive docket for two years.

Appendix B

Gordon v. *Jefferson Davis Parish School Board,* 460 F.2d 1062 (5th Cir. 1972)—Terminal plan ordered for 1972-73.

MISSISSIPPI

Adams v. *Rankin County Board of Education,* 485 F.2d 324, 524 F.2d 928 (5th Cir. 1975).

Bell v. *West Point Municipal Separate School Dist.,* 446 F.2d 1362 (5th Cir. 1971)—Terminal plan ordered August 31, 1971.

Franklin v. *Quitman County Board of Education,* 443 F.2d 909 (5th Cir. 1971).

Henry v. *Clarksdale Municipal Separate School Dist.,* 480 F.2d 583 (5th Cir. 1973).

Singleton v. *Jackson Municipal Separate School Dist.,* 509 F.2d 818 (5th Cir. 1975).

NORTH CAROLINA

Eaton v. *New Hanover County Bd. of Education,* 459 F.2d 684 (4th Cir. 1972)—Terminal plan ordered July 22, 1971.

Wheeler v. *Durham City Bd. of Education,* 521 F.2d 1136 (4th Cir. 1975)—Terminal plan approved August 13, 1975.

OKLAHOMA

Dowell v. *Board of Education of Oklahoma City,* 465 F.2d 1012 (10th Cir. 1972)—Terminal plan ordered February, 1972; modified in part June 3, 1974.

SOUTH CAROLINA

Adams v. *School Dist. No. 5, Orangeburg County,* 444 F.2d 99 (4th Cir. 1971)—Terminal plan ordered July 6, 1971.

Appendix B

Tennessee

Kelley v. *Metropolitan County Board of Educ.*, 463 F.2d 732, *cert. denied*, 409 U.S. 1001 (1972)—Terminal plan implemented 1971-72.

Texas

Flax v. *Potts*, 464 F.2d 865, *cert. denied*, 409 U.S. 1007 (1972)—Terminal plan approved August 23, 1973.

Virginia

Brewer v. *School Bd. of Norfolk*, 456 F.2d 943, *cert. denied*, 406 U.S. 933 (1972).

Downing v. *School Board of Chesapeake*, 455 F.2d 1153 (4th Cir. 1972).

Hart v. *County School Board of Arlington County*, 459 F.2d 981 (4th Cir. 1972)—Terminal plan ordered August 10, 1971.

Thompson v. *School Board of Newport News*, 363 F. Supp. 458 (E.D. Va. 1973)—Terminal plan approved September 11, 1973.